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STATE WATER RESOURCES CONTROL BOARD
PUBLIC HEARING
DIVISION OF WATER RIGHTS

PETITIONS TO REVISE
DECLARATION OF FULLY APPROPRIATED STREAMS
TO ALLOW PROCESSING OF TWO SPECIFIED APPLICATIONS TO
APPROPRIATE WATER FROM THE SANTA ANA RIVER

BONDERSON BUILDING
SACRAMENTO, CALIFORNIA

DECEMBER 8, 1999

REPORTED BY: ESTHER F. WIATRE
CSR NO. 1564

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STAFF:

KATHERINE MROWKA

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DANIEL FRINK

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SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 8, 1999, 9:00 A.M.

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HEARING OFFICER BAGGET: See if it sounds like we are getting close here. I think we left off with Inland Empire. Ready for the case in chief.

MR. CIHIGOYENETCHE: Morning.

H.O. BAGGET: Morning.

MR. CIHIGOYENETCHE: Couple of brief opening remarks. My name is Jean Cihigoyenetché.

Honorable Board, I represent the Inland Empire Utilities Agency and in another fashion many of the agencies incorporated within our geographical jurisdiction. Inland Empire Utilities Agency is a municipal water district. It encompasses a geographical territory of approximately 235 square miles and services a population presently approaching 700,000 people.

As can be discerned thus far, I am sure by the Board, the concerns which our upper region brings us here to Sacramento is that lifting the declaration of fully appropriation would somehow jeopardize the terms and conditions of the 1969 judgment as it provides for the delivery of 42,000 acre-feet per year in the aggregate at Prado Dam. We are concerned that this hearing and ultimate ruling may be but the first step in modifying and increasing

1 our responsibilities.

2 We are also concerned that Orange County and other
3 third parties may be seeking to lay claim to our wastewater
4 and storm flows which would adversely affect the Optimum
5 Base Management Plan. For those reasons, we are going to
6 put on a case in chief today that shows no change in
7 circumstances have occurred, as suggested by Orange County
8 Water District, which would warrant a lifting of the current
9 declaration of full appropriation.

10 The evidence we believe will show, first of all, these
11 increased flows, which are relied upon by Orange County
12 Water District in their presentation, were fully considered
13 and accounted for as early as 1960 when the original
14 judgment was enacted and put into place. The evidence will
15 show that through the terms and conditions of the judgment
16 itself that credits were provided for and the accounting for
17 credits were provided for.

18 Mr. Mills testified to a credit of over 1,000,000
19 acre-feet presently attributable to the northern region.
20 Query, why would credits be taken into account in the
21 judgment if excess flows were not contemplated at that
22 time? Hence, no change in circumstances presently.

23 Secondly, the evidence will show that although perhaps
24 historically we have not been as diligent in capturing these
25 storm flows and utilizing our reclaimed water as we would

1 have liked, we are implementing complete plans. Some of
2 these plans, including Ely Basin, and environmental reports
3 are underway as we speak. So they are not just plans on the
4 drawing board, but they are being presently implemented.

5 The evidence will show that ultimately all of the extra
6 flows that are being referred to in this proceeding will be
7 utilizing, enacting and implementing the Optimum Basin
8 Management Program.

9 Traci Stewart will testify on behalf of the agency that
10 she is in the process of preparing the Optimum Basin
11 Management Plan and that she is under court order to do so.
12 She has specific dates upon which that plan needs to be
13 completed. And that without utilization of extra flows that
14 we have been discussing here for the last day and a half,
15 these plans cannot be met. They simply will not be
16 accomplished. We are 100 percent reliant upon these flows.

17 Finally, in addition to the matters that we have
18 briefly discussed as to why we believe there are no changed
19 circumstances, we would also invoke by way of the 1969
20 judgment Section 8 of that judgment, which talks about
21 jurisdiction and who has jurisdiction over changes,
22 including changed circumstances and changes in the rights
23 between the parties to that judgment.

24 We would submit in terms of the legal argument that the
25 judgment supports exclusive jurisdiction in a Superior

1 Court, which we believe, pursuant to Section 8, has
2 preempted these issues presently before this Board.

3 So with that in mind, I would like to proceed with my
4 case in chief at this time. Ask Ms. Traci Stewart and Mr.
5 Doug Drury to step forward.

6 ---oOo---

7 DIRECT EXAMINATION OF INLAND EMPIRE UTILITIES AGENCY

8 BY MR. CIHIGOYENETCHE

9 MR. CIHIGOYENETCHE: Start with Ms. Stewart.

10 If you could please state your full name.

11 MS. STEWART: My name is Traci Stewart.

12 MR. CIHIGOYENETCHE: Ms. Stewart, what is your current
13 occupation?

14 MS. STEWART: I am the Chief of Watermaster Services
15 for the Chino Basin Watermaster.

16 MR. CIHIGOYENETCHE: Now, prior to the hearing we had
17 submitted written testimony prepared by you and have
18 identified it as Exhibit B.

19 Is that a true and correct copy of your written
20 testimony?

21 MS. STEWART: Yes, it is.

22 MR. CIHIGOYENETCHE: As Chief of Watermaster Services,
23 you are presently in the process of preparing an Optimum
24 Basin Management Plan; is that correct?

25 MS. STEWART: Yes.

1 MR. CIHIGOYENETCHE: Can you explain to us what in
2 effect that is?

3 MS. STEWART: Under our adjudication, which as entered
4 in 1978, the Watermaster has the responsibility to develop
5 an Optimum Basin Management Program for the Chino Basin.
6 And essentially what that program is is it is to encompass
7 all of the flows and sources of water that will enable us to
8 fully utilize the groundwater basin that is the Chino
9 Basin.

10 MR. CIHIGOYENETCHE: You are under court order to
11 accomplish this task; is that correct?

12 MS. STEWART: Yes, it is. We had an order entered on
13 February 19, 1998, that required us to complete it. It
14 established a time line, and that time line is due to be
15 completed by June of 2000.

16 MR. CIHIGOYENETCHE: And how much money has been spent
17 thus far in preparing and implementing the Optimum Basin
18 Management Plan?

19 MS. STEWART: We spent at least \$3,000,000 in
20 development and early implementation items for the Optimum
21 Basin Management Program.

22 MR. CIHIGOYENETCHE: Does the OBMT, and I will use the
23 abbreviation that we banty about, does the OBMT take into
24 consideration the use of conservation and storm flows and
25 recycled water?

1 MS. STEWART: In our Optimum Basin Management Program
2 we have nine program elements that we intend to pursue and
3 develop. And among those program elements, two of them --
4 one of them is recharging, increasing our ability to
5 recharge both storm flows and recycled water; and that would
6 be in furtherance of program elements three and five which
7 are to enhance -- maintain and enhance the yield of our
8 basin by improving our water supply and addressing some of
9 the impaired areas that we have in our basin, the challenges
10 that we have there.

11 MR. CIHIGOYENETCHE: Now, under the judgment with which
12 you are intimately familiar since you administer the Chino
13 Basin Judgment; is that correct?

14 MS. STEWART: Uh-huh.

15 MR. CIHIGOYENETCHE: That is a judgment separate and
16 apart from the Orange County Judgment that you heard
17 discussed here previously?

18 MS. STEWART: That's correct.

19 MR. CIHIGOYENETCHE: Under the Chino Basin Judgment it
20 is contemplated that additional water would be available for
21 conservation and urbanization; is that correct?

22 MS. STEWART: Under our judgment we have established
23 three pools, and those pools, they are based on categories
24 of use. And one category of use is we call the
25 appropriative pool. And those users serve municipal and

1 industrial uses in our basin. And under our judgment the
2 appropriative pool, and this is because of some things that
3 occurred during the adjudication, some legal things. But
4 that pool is entitled to any increases and must suffer any
5 decreases that we take in the safe yield of the basin.

6 So, what was contemplated is that during development of
7 our Optimum Basin Management Program, we would be enhancing
8 our yield by utilizing the storm flows, improving our
9 ability to conserve those storm flows and the increased
10 runoff from urbanization as well as increasing our ability
11 to use recycled water. And what we are anticipating is that
12 we will improve our ability to do that to the extent of 30-
13 to 40,000 acre-feet of increased storm flows and runoff and
14 an additional, at a minimum, 30 to 40 acre-feet of recycled
15 water.

16 MR. CIHIGOYENETCHE: Do you believe that lifting the
17 declaration of fully appropriated stream would have an
18 adverse effect on your plans?

19 MS. STEWART: This is why we are up here. We have
20 concern that it could do that because of our requirement and
21 court order mandate to use those flows and to improve our
22 ability to manage our basin.

23 MR. CIHIGOYENETCHE: I have no further questions of
24 this witness.

25 Mr. Drury, could you state your full name.

1 DR. DRURY: My name is Doug Drury.

2 MR. CIHIGOYENETCHE: What is your present occupation,
3 sir?

4 DR. DRURY: I am Executive Manager of operations and
5 Engineering for Inland Empire Utilities Agency.

6 MR. CIHIGOYENETCHE: How long have you held that
7 position?

8 DR. DRURY: For about four years.

9 MR. CIHIGOYENETCHE: Earlier I had submitted to the
10 Board the resume of Mr. Drury attached with my notice of
11 intent to produce witnesses. That was erroneously omitted
12 from my Exhibit list. If I could have that marked as
13 Exhibit H with Board's permission, the resume of Doug Drury?

14 MR. FRINK: That is fine.

15 H.O. BAGGET: That is fine.

16 MR. CIHIGOYENETCHE: Thank you.

17 And you had submitted to us earlier, Dr. Drury, a true
18 and correct copy of your resume; is that correct?

19 DR. DRURY: That's correct.

20 MR. CIHIGOYENETCHE: Previously we have submitted your
21 declaration, an amended Declaration, which has been
22 generally identified as Exhibit A. Is that a true and
23 correct copy of your written testimony, sir?

24 DR. DRURY: With the exception of the spellings of
25 percolation it is.

1 MR. CIHIGOYENETCHE: Typographical errors omitted, that
2 is your testimony?

3 DR. DRURY: That's correct.

4 MR. CIHIGOYENETCHE: You had to get that in, didn't
5 you?

6 Now, you too, Dr. Drury, have involvement with the
7 Optimum Basin Management Program; is that correct?

8 DR. DRURY: That's correct. I have been an active
9 participant in the process.

10 MR. CIHIGOYENETCHE: What is the nature of your role in
11 that process?

12 DR. DRURY: Basically, just one of the participants.
13 The process includes all the different water users and
14 wastewater treatment people in the Chino Basin area, and
15 everybody's represented. And I have been one of the
16 representation people active in the process.

17 MR. CIHIGOYENETCHE: You are familiar with the nature
18 of the plans that are being implemented at the present time
19 to increase the use of wastewater?

20 DR. DRURY: Yes. We've put together a plan for
21 recycling and reuse of our wastewater in the area, and we
22 have made several presentations, both to OMP and to our
23 various agencies in the area.

24 MR. CIHIGOYENETCHE: We have attached, also, a
25 presentation and identified it as Exhibit D in our notice.

1 Is that a true and correct copy of the presentation you are
2 referring to, sir?

3 DR. DRURY: Yes, sir.

4 MR. CIHIGOYENETCHE: What basically is that
5 presentation about?

6 DR. DRURY: Basically it is a presentation of our plan
7 to recycle wastewater. It goes through all the possible
8 scenarios we have in terms of development of recharge
9 sites. It talks about our use of recycled water, both
10 present and in the future, and tries to quantify those
11 waters.

12 MR. CIHIGOYENETCHE: How much water, wastewater, is
13 being discharged by Inland Empire at this point in time?

14 DR. DRURY: We discharge somewhere between 50- and
15 60,000,000 gallons per day.

16 MR. CIHIGOYENETCHE: Can you tell the Board a little
17 bit about what Inland Empire's plans for reclaimed water are
18 as time progresses?

19 DR. DRURY: Basically, we plan on increasing the amount
20 of recycle and reuse in the area. That is a very simplified
21 version. But we want to recharge. We want to blend with
22 storm water and blend with State Project Water our effluent
23 into the groundwater basin. In addition we want to dual
24 pipe new development areas and use that for landscape
25 irrigation.

1 MR. CIHIGOYENETCHE: You have a couple overheads you
2 have pulled directly from Exhibit D; is that correct?

3 DR. DRURY: That's correct.

4 MR. CIHIGOYENETCHE: Would you go ahead and put those
5 on the board.

6 This is part of Exhibit D; is that correct?

7 DR. DRURY: That's correct.

8 MR. CIHIGOYENETCHE: Can you explain to us what this
9 depicts?

10 DR. DRURY: What it shows is, first off, the boundaries
11 of our district. And then we have located here all of the
12 recharge basins in the area in green. We have located our
13 wastewater treatment plants in brown. And then we have
14 located our backbone of our water reclamation system in the
15 purple and the solid lines being the existing piping system.
16 The dotted lines being what we planned for the near future.

17 As you can see, we have a lot of basins in the area.
18 Our ultimate goal is to supply wastewater to every one of
19 these recharge basins in the area to blend with the storm
20 water and to blend with State Project Water. The dark blue
21 lines are the State Project Water lines that already extend
22 into some of the basins. We have to do some work there, as
23 well. You see we have future extensions of the State
24 Project Water line. And, basically, our objective is to in
25 every basin in the area put State Project Water in the basin

1 as well as reclaimed water in the basin.

2 Should notice that we have between our distance between
3 RP4 and Carbon Canyon we have over 15 miles of pipeline. We
4 have ability to reclaim on that line. We are going to
5 interconnect so eventually we will have a backbone through
6 our district of reclaimed water. And you see this area down
7 here, this is important because we just put that system on
8 line. We've dual piped parts of the City of Chino and Chino
9 Hills. This just went on line this last year. And Bill
10 Mills is correct. It is very expensive to do.

11 We have committed to reclamation. We installed this
12 system in the last year, about 2000 acre-feet per year. We
13 have just put on line Ely Basin. We have been discharging
14 there this year in September. We are putting about 500
15 acre-feet per year into this basin. We are presently doing
16 an EIR, preparing an EIR for percolation of sewage effluent
17 in Ely and Etiwanda Basins. It is going to take very little
18 effort for us to go through or percolate into these other
19 two basins, one right adjacent to our plant and one right
20 below our plants. That is basically our plan for the
21 future.

22 MR. CIHIGOYENETCHE: Are these plans contingent upon
23 delivering 17,000 acre-feet of water to Orange County Water
24 District at Prado Dam?

25 DR. DRURY: That's correct.

1 MR. CIHIGOYENETCHE: If the declaration of fully
2 appropriated status is lifted, do you believe that would
3 have an adverse impact on these plans that you are
4 implementing?

5 DR. DRURY: There is no question that if we had to
6 discharge that that would alter our plans, yes.

7 MR. CIHIGOYENETCHE: If you had to discharge more than
8 that amount?

9 DR. DRURY: Right.

10 MR. CIHIGOYENETCHE: How much of the present wastewater
11 do you believe you will be able to use in terms of recharge
12 in the future?

13 DR. DRURY: Our goal is to use all but the 17,000
14 acre-feet per year.

15 MR. CIHIGOYENETCHE: That is all but your obligation
16 under the Orange County Judgment?

17 DR. DRURY: Right.

18 MR. CIHIGOYENETCHE: Salt management is also a program
19 contemplated by IEUA; is that correct?

20 DR. DRURY: That's correct.

21 MR. CIHIGOYENETCHE: What is the nature of that
22 program?

23 DR. DRURY: Basically there is three desalters planned
24 for the area. One of which is under construction which will
25 be completed this spring. And basically it is to remove the

1 salt from the water and make the waters in the bottom end of
2 our basin useful and use that as a water supply source for
3 the new development.

4 MR. CIHIGOYENETCHE: Has the salt management program
5 been implemented in any way?

6 DR. DRURY: We are beginning to implement it. Like we
7 said, the first desalter will be on line this spring. There
8 is other aspects of the program. We have established a
9 manure composting site so we can export the salts outside
10 the basin. We're actively involved in salt management in
11 our basin.

12 MR. CIHIGOYENETCHE: You indicate that your planning
13 process is reliant on the terms and conditions of the 1969
14 Orange County Judgment; is that correct?

15 DR. DRURY: That's correct.

16 MR. CIHIGOYENETCHE: I believe your written testimony
17 suggests that, if and when your plans are implemented, there
18 will be no extra water over and above what you are required
19 to deliver at Prado Dam; is that correct?

20 DR. DRURY: That is an ambitious goal, but that is our
21 goal.

22 MR. CIHIGOYENETCHE: Do you have any idea in terms of
23 dollars and cents how much has been expended thus far in
24 implementing these long-term plans?

25 DR. DRURY: Geez. Between the time planning effort and

1 what we have already got constructed, we're looking in
2 excess of \$15,000,000 to date with -- I am just -- the
3 salters are another 55,000, which is a three-party effort.
4 That is not 55,000. And you're going to build two more
5 desalters, so you are looking at another hundred million.
6 There is considerable effort to date, at least, say,
7 \$70,000,000.

8 MR. CIHIGOYENETCHE: Now you have made reference to one
9 desalter. There is one under construction now; is that
10 correct?

11 DR. DRURY: That's correct.

12 MR. CIHIGOYENETCHE: When is it estimated that that
13 will come on line?

14 DR. DRURY: This spring.

15 MR. CIHIGOYENETCHE: That is a cooperative agreement
16 between several agencies?

17 DR. DRURY: That's correct.

18 MR. CIHIGOYENETCHE: Who are the parties to that?

19 DR. DRURY: Western Municipal Water District and Orange
20 County Water District working as a subcommittee of SAWPA.

21 MR. CIHIGOYENETCHE: Did you have any overheads that
22 you --

23 DR. DRURY: No. I did want to make an additional
24 comment. The Regional Board is very concerned about the
25 groundwater leaving our basin, and we have been working with

1 MR. O'BRIEN: So you have a general understanding of
2 the proposal, but perhaps haven't studied the details?

3 DR. DRURY: That's correct.

4 MR. O'BRIEN: If the appropriation of water by my
5 clients were ultimately approved by this Board with terms
6 and conditions that ensured that the interest of the agency,
7 particular the interest related to wastewater, reuse, that
8 you have outlined in your testimony, if those interests were
9 fully protected, would your agency have any objection in
10 principle to the idea of appropriating water at Seven Oaks
11 Dam?

12 MR. CIHIGOYENETCHE: Interpose an objection. Vague.
13 No foundation. I don't know Dr. Drury has that authority to
14 agree on behalf of our agency as to anything.

15 MR. O'BRIEN: I am just asking for his understanding of
16 his agency's position with respect to our petition, which is
17 the reason we are here. If he doesn't have authority, he
18 can say so.

19 H.O. BAGGET: You can answer.

20 DR. DRURY: I have no position on their action.

21 MR. O'BRIEN: Has your agency taken a position in
22 opposition to the petition to revise the fully appropriated
23 stream order that has been filed by Muni and Western?

24 MR. CIHIGOYENETCHE: To your knowledge.

25 DR. DRURY: Not that I am aware of.

1 MR. O'BRIEN: So they have taken no position on it?

2 DR. DRURY: That's correct.

3 MR. O'BRIEN: Thank you.

4 H.O. BAGGET: Mr. McNevin.

5 MR. MCNEVIN: Thank you.

6 ---oOo---

7 CROSS-EXAMINATION OF INLAND EMPIRE UTILITIES AGENCY

8 BY ORANGE COUNTY WATER DISTRICT

9 BY MR. MCNEVIN

10 MR. MCNEVIN: Good morning. I am Chris McNevin,
11 again.

12 Dr. Drury, I received your amended testimony last
13 Friday. Out of curiosity, why did you amend your
14 testimony?

15 DR. DRURY: There was some typographical errors as well
16 as rephrasing of some questions.

17 MR. MCNEVIN: You basically doubled the length of it?

18 MR. CIHIGOYENETCHE: I am going to object. It calls
19 for a legal conclusion.

20 MR. FRINK: Mr. McNevin, excuse me. I think I can
21 answer that. We received what was essentially an outline of
22 the testimony that Dr. Drury was going to submit, and I
23 spoke with the attorney for Inland Empire and advised him,
24 in accordance with the hearing notice and our regulations,
25 he was supposed to submit the testimony in writing in full.

1 And he indicated he would prepare -- he would work with Dr.
2 Drury, prepare the amended version and get that out as soon
3 as he could.

4 MR. MCNEVIN: Thank you very much.

5 Dr. Drury, we were surprised to hear that your
6 testimony is that these programs you described are going to
7 impact the flows at Prado, and that is what I would like to
8 talk to you about today.

9 First of all, it is my understanding that you do agree
10 that the base flows at Prado have increased as a result of
11 increased wastewater generated upstream?

12 DR. DRURY: That is one of the factors, yes.

13 MR. MCNEVIN: And you testified in your written
14 testimony as amended that Inland Empire has been developing
15 plans to reuse this wastewater since the 1969 stipulated
16 judgment; is that correct?

17 DR. DRURY: That's correct.

18 MR. MCNEVIN: So for 30 years you have been developing
19 these plans; is that correct?

20 DR. DRURY: That's correct.

21 MR. MCNEVIN: Yet notwithstanding these 30 years of
22 plans that you've been developing, the base flows at Prado
23 are still increasing each year for the past several years;
24 isn't that correct?

25 DR. DRURY: Yes. That is a conclusion you can come

1 to.

2 MR. MCNEVIN: Do you agree with that conclusion?

3 DR. DRURY: The difference is between planning and
4 implementing. We are now starting to implement.

5 MR. MCNEVIN: Yes. But my question is,
6 notwithstanding, your 30 years of plans, the base flows have
7 nonetheless been increasing during that whole 30-year period?

8 DR. DRURY: That's correct.

9 MR. MCNEVIN: Inland Empire is a member of the Santa
10 Ana River Watermaster?

11 DR. DRURY: That's correct.

12 MR. MCNEVIN: And the Watermaster publishes these
13 reports of base flows each year?

14 DR. DRURY: Yes.

15 MR. MCNEVIN: And when you saw Bill Mills' chart
16 showing that on the average over the past 30 years of your
17 plans the base flows have been increasing by approximately
18 3800 acre-feet per year, did you have any basis to disagree
19 with that?

20 DR. DRURY: No.

21 MR. MCNEVIN: Now, you said in your amended testimony,
22 and I will quote from Paragraph 5:

23 At the present time Inland Empire Utility
24 Agency has significantly -- (Reading.)

25 And that is your word, significantly.

1 -- increased the use of reclaimed and
2 recycled water. (Reading.)
3 Do you see that in Paragraph 5, Line 13?
4 DR. DRURY: Yes.
5 MR. MCNEVIN: Your current use of recycled water is
6 approximately 4100 acre-feet per year?
7 DR. DRURY: That's correct.
8 MR. MCNEVIN: So that 4100 acre-feet is the figure you
9 are referring to as your present significant increase?
10 DR. DRURY: No. The 4100 is an absolute value, not
11 increase.
12 MR. MCNEVIN: You said -- what was the increase?
13 DR. DRURY: In the last we've approximately doubled
14 that with two projects we put on line. So, roughly 2,000
15 prior to last year, 4,000 this year.
16 MR. MCNEVIN: So then the significant increase you
17 refer to in Paragraph 5 is 2,000 acre-feet?
18 DR. DRURY: That's correct.
19 MR. MCNEVIN: And the example you gave of actual use of
20 reclaimed wastewater is this dual pipeline to Chino and
21 Chino Hills?
22 DR. DRURY: That is one example.
23 MR. MCNEVIN: The other --
24 DR. DRURY: Ely Basin.
25 MR. MCNEVIN: The first example is the dual pipeline?

1 DR. DRURY: Right.

2 MR. MCNEVIN: You said in Paragraph 10 that this dual
3 pipeline project has been in operation for approximately two
4 years already.

5 Do you see that, Paragraph 10?

6 DR. DRURY: That's correct.

7 MR. MCNEVIN: Paragraph 10, Line 26.

8 DR. DRURY: We're in our second year.

9 MR. MCNEVIN: Not withstanding the operation of that
10 dual pipeline program, as you testified, for two years
11 approximately the Watermaster of which Inland Empire is a
12 member, still reports significant increases in base flows at
13 Prado over the past two years, doesn't it?

14 DR. DRURY: Yes.

15 MR. MCNEVIN: Now, you mentioned also the Ely Basin
16 recharge facility, and you described that as a more
17 important project, correct? Paragraph 10, Line 23.

18 DR. DRURY: Okay.

19 MR. MCNEVIN: Is that your term for that project?

20 DR. DRURY: I said more importantly.

21 MR. MCNEVIN: That project only involves 500 acre-feet
22 per year, correct?

23 DR. DRURY: That's correct.

24 MR. MCNEVIN: Has that more important project caused
25 any detectable decrease in base flows at Prado?

1 DR. DRURY: The more important project is a
2 demonstration of the process and the potential for future
3 recharge. That is why it is more important.

4 Now as to your question, more important project, it has
5 not -- it is about 500 acre-feet per year; and that has not
6 significantly impacted flow at Prado yet, no.

7 MR. MCNEVIN: Long-term --

8 DR. DRURY: Realize that was started up in September of
9 this year.

10 MR. MCNEVIN: Right.

11 500 acre-feet, does that cause any detectable or even
12 measurable decrease at Prado?

13 DR. DRURY: Probably not.

14 MR. MCNEVIN: Long-term, you testified at Paragraph 6,
15 that you hope to reuse 71,700 acre-feet wastewater by 2020?

16 DR. DRURY: Yes.

17 MR. MCNEVIN: You don't have the contracts and the
18 infrastructure to use that wastewater today, do you?

19 DR. DRURY: They are being worked out as part of OBMP,
20 so we do not have it today. The concept is in place and we
21 are working on it.

22 MR. MCNEVIN: You have a concept, but you don't have an
23 infrastructure?

24 DR. DRURY: We have some of the infrastructure, not all
25 of the infrastructure.

1 MR. MCNEVIN: And the infrastructure you've got is for
2 500 acre-feet Ely Basin --

3 DR. DRURY: No, that is incorrect. We have pipelines
4 in place. We have pipelines going by recharge basins. We
5 just have not run the 200 feet of pipeline from the main
6 pipeline to the basins. We are presently doing EIRs to do
7 that.

8 MR. MCNEVIN: Do you have the infrastructure in place
9 to use anywhere near today this projection of 71,700 by
10 2020?

11 DR. DRURY: No.

12 MR. MCNEVIN: By 2020, if I understand, you also plan
13 to import a great deal more water; is that correct?

14 DR. DRURY: That's correct.

15 MR. MCNEVIN: In one of the charts on Page 1 of your
16 Exhibit E calls for importing of 111,000 acre-feet of water
17 by year 2020.

18 Did I read that right?

19 DR. DRURY: I don't have that in front of me right
20 now.

21 MR. CIHIGOYENETCHE: Exhibit D.

22 MR. MCNEVIN: Exhibit E, Page 1. I could provide my
23 copy to the witness if you don't want to give him yours.

24 MR. CIHIGOYENETCHE: That was an exhibit prepared for
25 the testimony of Richard Atwater who is not testifying. I

1 don't know how familiar the witness is with that document.

2 DR. DRURY: I am not familiar with this document.

3 MR. MCNEVIN: Was that prepared for Inland Empire and
4 submitted as an exhibit today?

5 MR. CIHIGOYENETCHE: Objection. No foundation. We've
6 had no testimony authenticating this document as an
7 exhibit.

8 H.O. BAGGET: Sustained.

9 MR. MCNEVIN: Does the figure supplied by Mr. Atwater
10 of 111,000 acre-feet of imported water comport with your
11 understanding as the manager of Inland Empire?

12 DR. DRURY: I am not familiar with the document he
13 submitted.

14 MR. MCNEVIN: Are you familiar with the figures as
15 manager of your agency?

16 MR. CIHIGOYENETCHE: Objection. He is not the manager
17 of the agency.

18 MR. MCNEVIN: Pardon me.

19 In your capacity with Inland Empire are you familiar
20 with the figure for projected water imports by 2020?

21 DR. DRURY: I don't have them roughly available. I
22 can't pull it off the top of my head.

23 MR. MCNEVIN: Let's give Mr. Atwater some credit where
24 credit is due, and I will put this in terms of a
25 hypothetical, just to put your mind at ease.

1 Assuming that Mr. Atwater's figure of 111,000 acre-feet
2 per year of imported water is accurate, please.

3 DR. DRURY: Okay.

4 MR. MCNEVIN: Will that cause your wastewater flows to
5 be increased by year 2020?

6 DR. DRURY: It's possible.

7 MR. MCNEVIN: Would you look at Exhibit E, Page 3.
8 Does that show increased wastewater flows projected by
9 Inland Empire for year 2020?

10 DR. DRURY: Yes.

11 MR. MCNEVIN: Are you, in your capacity with Inland
12 Empire, familiar with wastewater flow projections?

13 DR. DRURY: Yes.

14 MR. MCNEVIN: So Exhibit E, Page 3, shows an increase
15 in wastewater flows projected at about 70,000 acre-feet by
16 2020, correct?

17 DR. DRURY: That appears roughly correct.

18 MR. MCNEVIN: And 70,000 acre-feet increased wastewater
19 flows is almost exactly the same number that you gave me a
20 minute ago, 71,700 acre-feet, of your proposed reuse or
21 your planned reuse by 2020; isn't that correct?

22 DR. DRURY: That's correct.

23 MR. MCNEVIN: So your projected reuse amount of
24 wastewater approximately equals the projected increase in
25 wastewater you are going to generate in 2020?

1 DR. DRURY: That's correct.

2 MR. MCNEVIN: Let's talk about storm flow for a
3 minute. You mentioned a capture of storm flow to mix with
4 some of the wastewater you plan to percolate. Why do you
5 need to do that?

6 DR. DRURY: To meet health department requirements for
7 the blending of wastewater before you recharge it.

8 MR. MCNEVIN: Can you give me a little more detail?
9 What is that department requirement as you understand it?

10 DR. DRURY: I can pull out an overhead if you like.

11 MR. MCNEVIN: If you feel more comfortable with that or
12 you can give me your understanding, either way.

13 DR. DRURY: Basically, the health department requires
14 blending, and the amount of blending depends on the
15 concentration of organic carbons.

16 MR. MCNEVIN: With your wastewater you are required to
17 only use approximately one-third wastewater for blending and
18 the rest has got to be either imported or storm flow?

19 DR. DRURY: That's roughly the number, yes.

20 MR. MCNEVIN: You provided the figure of 12,000
21 acre-feet of storm flows you might use for that purpose in
22 Paragraph 8, Line 15, of your testimony?

23 DR. DRURY: Yes.

24 MR. MCNEVIN: Did I read that correctly?

25 DR. DRURY: Yes.

1 MR. MCNEVIN: So you're going to need a yield of 27,000
2 acre-feet of storm flow for this purpose; is that accurate,
3 each year?

4 DR. DRURY: The question of need is either storm water
5 and/or State Project water; it has to be blended. Doesn't
6 matter, one or the other.

7 MR. MCNEVIN: I understand you don't know how much
8 wastewater or how much imported water you are going to be
9 buying, but your figure was 12,000 acre-feet that you
10 needed?

11 DR. DRURY: That's an approximation, yes.

12 MR. MCNEVIN: Are you familiar with the rule of seven?

13 DR. DRURY: I don't know your slang.

14 MR. MCNEVIN: My slang is that if you want a yield of
15 one acre-foot of storm water you need to have a storage
16 volume of seven acre-feet to develop that yield on a
17 dependable basis.

18 Are you familiar with that, phrased that way?

19 DR. DRURY: No.

20 MR. MCNEVIN: Can you tell me if you take 12,000
21 acre-feet of storm flow per year, if you have the capacity
22 to take that, what percentage is that of the average annual
23 storm flow reaching Prado over the past 30 years?

24 DR. DRURY: I don't know the number.

25 MR. MCNEVIN: No more questions.

1 H.O. BAGGET: Thank you.
2 San Bernardino Valley Water Conservation District?
3 MR. COSGROVE: We have no questions.
4 H.O. BAGGET: East Valley.
5 MR. KENNEDY: No questions.
6 H.O. BAGGET: Big Bear.
7 MR. EVENSON: No questions.
8 H.O. BAGGET: Santa Ana River Local Sponsors?
9 MR. DONLAN: No questions.
10 H.O. BAGGET: City of Ontario.
11 MR. GARNER: Just a couple.
12 ---oOo---
13 CROSS-EXAMINATION OF INLAND EMPIRE UTILITIES AGENCY
14 BY CITY OF ONTARIO, CUCAMONGA COUNTY WATER DISTRICT,
15 CITY OF CHINO & MONTE VISTA WATER DISTRICT
16 BY MR. GARNER
17 MR. GARNER: Eric Garner, once again.
18 Just a couple questions for you, Ms. Stewart.
19 Is the Cucamonga County Water District a party to the
20 Chino Basin Judgment?
21 MS. STEWART: Yes.
22 MR. GARNER: Is it an active participant in the OBMT
23 process?
24 MS. STEWART: It certainly is.
25 MR. GARNER: Is the same true for the City of Ontario?

1 MS. STEWART: Yes.

2 MR. GARNER: Is the same true for the City of Chino?

3 MS. STEWART: Yes.

4 MR. GARNER: Is the same true for the Monte Vista Water
5 District?

6 MS. STEWART: That's correct.

7 MR. GARNER: Thank you, ma'am.

8 No further questions.

9 MR. CIHIGOYENETCHE: Couple of follow-up questions for
10 Dr. Drury.

11 ---oOo---

12 REDIRECT EXAMINATION OF INLAND EMPIRE UTILITIES AGENCY

13 BY MR. CIHIGOYENETCHE

14 MR. CIHIGOYENETCHE: Dr. Drury, although you have
15 testified that you have been developing plans or the agency
16 has been developing plans for the last 30 years,
17 implementing those plans takes money; is that correct?

18 DR. DRURY: That's correct.

19 MR. CIHIGOYENETCHE: The principal reason that you have
20 been delayed or been unable to implement those plans is the
21 fact that there are no resources available to construct the
22 infrastructure referred to; is that correct?

23 DR. DRURY: Yes, sir.

24 MR. CIHIGOYENETCHE: Now, there is another issue with
25 respect to infrastructure, the development of what has been

1 referred to as the ag preserve; is that correct?

2 DR. DRURY: Yes.

3 MR. CIHIGOYENETCHE: What do you understand the ag
4 preserve to be?

5 DR. DRURY: Ag preserve is approximately 13 to 15
6 square miles of undeveloped agricultural lands that is in
7 the middle -- lower end of our district, and we will be soon
8 developing.

9 MR. CIHIGOYENETCHE: There is essentially no
10 infrastructure in that region; is that correct?

11 DR. DRURY: That's correct.

12 MR. CIHIGOYENETCHE: And as that region begins to
13 develop that will afford you an opportunity to construct the
14 infrastructure; is that correct?

15 DR. DRURY: Construct the infrastructure at the time of
16 development, not later when it is more expensive to do so.

17 MR. CIHIGOYENETCHE: Your plans include double piping
18 in that region, as well; is that correct?

19 DR. DRURY: We are discussing dual piping with both of
20 the major cities involved in that area.

21 MR. CIHIGOYENETCHE: I have nothing further.

22 H.O. BAGGET: Any recross?

23 MR. MCNEVIN: No.

24 H.O. BAGGET: Any other party?

25 No.

1 Staff.

2 MS. MROWKA: Mr. Bagget, before we move exhibits, I
3 would like to have Mr. Cihigoyenetcche list the exhibits he
4 is asking us to accept.

5 MR. CIHIGOYENETCHE: That is what I was looking for.

6 MEMBER FORSTER: I have a question about this
7 judgment. The City of Chino versus the Chino --

8 MS. STEWART: Basin Municipal Water District.

9 MEMBER FORSTER: Tell me a little bit about that, what
10 caused that.

11 MS. STEWART: That judgment -- as a result of the '69
12 judgment going into effect, the producers in the Chino Basin
13 had been watching that activity and waiting for that to be
14 settled before they initiated a process to enter our
15 judgment. And they began the process shortly after the '69
16 judgment was entered, and then they took a stipulated
17 agreement to the court in the mid '70s, and it was entered
18 in 1978, January of 1978.

19 And the foundation was, there was a condition of
20 overdraft and they wanted to adjudicate the rights within
21 the Chino Basin, knowing that the rights along the Santa Ana
22 River were settled.

23 MEMBER FORSTER: Okay. Thanks.

24 H.O. BAGGET: Back to the exhibits.

25 MR. CIHIGOYENETCHE: I would move the written testimony

1 as amended of Douglas D. Drury as Exhibit A.

2 I would move the written testimony of Traci Stewart as
3 Exhibit B.

4 I would move the written exhibits to be utilized by Dr.
5 Drury as Exhibit D, since they have already been identified
6 as such.

7 I would move the Chino Basin Municipal Water District
8 versus City of Chino judgment as F.

9 I would move the Orange County Water District versus
10 Chino Judgment as G.

11 And then the resume of Dr. Drury as marked, as H.

12 MS. MROWKA: Thank you for the clarification.

13 H.O. BAGGET: If there is no objections, those
14 documents will be entered into evidence.

15 MR. FRINK: Just so it is clear, you are then
16 withdrawing your Exhibit C and your Exhibit E that were
17 previously submitted?

18 MR. CIHIGOYENETCHE: That's correct.

19 Thank you.

20 MR. MCNEVIN: Mr. Bagget, I would move the admission of
21 Page 3 of the Exhibit E. I believe that the witness did
22 authenticate the wastewater flows that are reflected on that
23 exhibit.

24 MR. CIHIGOYENETCHE: No objection.

25 H.O. BAGGET: So Big Bear Municipal Water District --

1 MR. COSGROVE: Excuse me. Just one point, and that is
2 that I was a little remiss. We probably should have done it
3 before Inland Empire started up.

4 There was a question with respect to a proposed
5 stipulation yesterday and our client's potential interest in
6 cross-examining some of the parties from East Valley Water
7 District. The witnesses were indicated and made available.
8 I haven't yet had a chance to formulate that stipulation or
9 talk about the specifics of it with Mr. O'Brien. I would
10 like to do that.

11 Before we move on too much further, we would like to,
12 in the absence of the ability to work out a stipulation on
13 that, reserve the right for cross-examination of Mr. Martin
14 briefly.

15 H.O. BAGGET: If there is no objections, then we might
16 as well do it now.

17 Would it be appropriate to take a recess now?

18 MR. O'BRIEN: I would suggest perhaps we ought to go
19 ahead and finish with Big Bear and Mr. Cosgrove and I can do
20 this at the break.

21 MR. COSGROVE: Forgive the interruption.

22 H.O. BAGGET: Big Bear.

23 MS. HAMILTON: Good morning.

24 H.O. BAGGET: Good morning.

25 MS. HAMILTON: My name is Sheila Hamilton. I am the

1 General Manager of Big Bear Municipal Water District. I've
2 been with the district for about 15 years, seven of those in
3 my capacity as general manager. My remarks are going to be
4 very brief and basically just to lay the format for Mr.
5 Evenson who is our engineering consultant to give his expert
6 testimony.

7 As you can see, we do not have an attorney representing
8 us today. We didn't feel the nature of our comments today
9 warranted legal counsel. So if you will perhaps help us
10 with any procedural issues so we do the appropriate thing in
11 filing our testimony.

12 My remarks will mostly be just to give a little
13 background of Big Bear Lake. We have seen the overheads.
14 You are familiar with the location of the lake at the top of
15 the watershed. A little history on the district.

16 The district owns and operates the Bear Valley Dam
17 which stores the flows from Bear Creek. As we know, Bear
18 Creek is located in the upstream portion of the Santa Ana
19 River watershed and is a major tributary to the Santa Ana
20 River. The district also owns and operates various
21 recreational facilities on Big Bear Lake and, of course, the
22 lake is a reservoir formed by the water stored behind the
23 Bear Valley Dam.

24 The reservoir was originally constructed in 1884 by
25 Bear Valley Mutual Water Company with the construction of

1 the original Bear Valley Dam. Then in 1912 a larger dam was
2 constructed and that is the dam we refer to today. The lake
3 impounds 73,000 acre-feet of water. Important to note, I
4 think, is that this water is all natural inflow
5 precipitation. We have no ability to fill the lake from any
6 other source. It is not in any way a state project
7 reservoir; and so once water is released from the lake there
8 is no ability to replace it.

9 The lake was formed as an irrigation reservoir to meet
10 the downstream irrigation demands in Redlands for the orange
11 growers, and over time, as is common with irrigation
12 reservoirs of that type, it expressed drastic fluctuations
13 in lake levels. So, in 1964 Bear Valley community decided
14 that that fluctuation was unacceptable for the economy which
15 was developing around the lake.

16 So, the water district was formed and then it took 13
17 years of various negotiations, court filings to decide the
18 management of the lake. And the water district in 1977 was
19 finally able to purchase the Bear Valley Dam, the land
20 beneath the lake, and the right to manage the surface
21 recreation rights. The water rights, however, remained with
22 Bear Valley Mutual Company. The purchase price of this
23 transaction was \$4.7 million and that included a stipulated
24 judgment with Bear Valley Mutual Water Company, San
25 Bernardino Valley Conservation District, and a group of

1 water companies which you've heard referred to, I think, in
2 previous testimony as prior right companies.

3 These parties to the judgment, as I said, continue to
4 hold the water rights to the flow in Bear Creek as well as
5 to the flow in the Santa Ana River as it leaves the
6 mountains and enters the valley floor.

7 Now, the basic concept behind the '77 judgment was that
8 Big Bear Municipal Water District acquired the right to
9 store water in the lake. The way to achieve that was to
10 meet demands from Mutual for water, either releasing water
11 from the lake or delivering other water in lieu of releases,
12 which we now call our In Lieu Water Program. So, basically,
13 when Bear Valley needs water and they call and say, "We need
14 X number acre-feet," we can either release it or we can call
15 our supplier which currently is San Bernardino Valley
16 Municipal Water District, and they can deliver State water
17 project water in lieu of releasing from the lake. Hence, we
18 stabilize lake level, and that was the entire goal of the
19 judgment when it was formulated.

20 This stored water is used to maintain the water level
21 for various activities, recreational, environmental and
22 aesthetic. Boating and fishing enthusiasts from throughout
23 Southern California use the lake for these purposes. It is
24 also used as water supply for snow making for the ski areas.
25 We have two major ski areas in the area, and it is used to

1 supply their water to make snow when natural snowfall is
2 inadequate for skiing, which generally is every year. It is
3 generally inadequate in the Big Bear Valley for snow. The
4 skiers from throughout Southern California and, in fact, the
5 entire state come to Big Bear during the winter to enjoy the
6 excellent skiing and other winter sports.

7 The bottom line is that the stabilized lake level is
8 pretty much the stabilization of the economy of Big Bear
9 Valley.

10 The judgment provided Big Bear Municipal Water District
11 with the legal framework to provide these benefits to the
12 people of the State of California. The purpose of our
13 presence today is to insure that this judgment is recognized
14 in your deliberations and that Big Bear Municipal Water
15 District will be able to continue to utilize the waters of
16 Bear Creek and to provide the beneficial uses in the most
17 efficient and cost-effective manner.

18 We appreciate the opportunity to be included in these
19 proceedings, and I would like to introduce our expert
20 witness, Mr. Donald Evenson. He has been our consultant on
21 water issues for 16 years. He serves as our representative
22 on the Big Bear Watermaster Committee, which oversees the
23 implementation of the 1977 judgment, and he has been serving
24 in that capacity since 1987.

25 Thank you.

1 DIRECT TESTIMONY OF BIG BEAR MUNICIPAL WATER DISTRICT

2 BY MR. EVENSON

3 MR. EVENSON: Thank you. My name is Don Evenson. I
4 represent Big Bear Municipal Water District. I am employed
5 by Montgomery Watson and work out of our Walnut Creek
6 office. My resume has been previously submitted to the
7 Board when we filed a notice to appear.

8 I have a map that will illustrate where a couple of the
9 features are. I have copies here for everybody in the
10 audience and the Board Members.

11 As Sheila mentioned in her opening statement, Big Bear
12 Municipal Water District owns Bear Valley Dam which is at
13 the headwaters of Bear Creek and entered into a 1977
14 judgment, a stipulated judgment, that gave Big Bear
15 Municipal Water District the right to store water in Big
16 Bear Lake. And the purpose of this was to stabilize the
17 water levels, to create recreational, environmental and
18 other benefits. This is referred to in the judgment as a
19 physical solution.

20 It also provided an opportunity for Big Bear to provide
21 in lieu water, which is water that would not be released
22 from the lake, so that they could store additional water in
23 the lake. And in so doing, they had to protect all the
24 downstream water rights holders.

25 They also had to protect the downstream groundwater

1 basin through what is referred to as a basin makeup
2 account. So, if there are any deficiencies in flows
3 entering the San Bernardino Basin for recharge purposes, Big
4 Bear Municipal Water District is obligated to provide
5 supplemental water to protect the downstream groundwater
6 basins. These activities in the watershed are overseen by a
7 Watermaster Committee that oversees the judgment, makes sure
8 that all activities are in compliance with the judgment and
9 files a report annually with the Superior Court of San
10 Bernardino County.

11 This is referred to as Exhibit B.

12 A second item is the State Water Resources Control
13 Board Order Number 95-4 that was entered into about four
14 years ago which required Big Bear Municipal Water District
15 as the owner of the dam to release a minimum of three-tenths
16 of a cfs from the dam for fish, local fish, protection
17 purposes. It also -- this is the location, the upstream
18 green dot. Just below that, below the Cub Creek tributary
19 they had to guarantee a minimum of 1.2 cfs at all times.
20 This is a seven-day running average, to protect the local
21 trout fishery.

22 Now, there are times when this is an additional
23 requirement. This is water that frequently can also be used
24 by mutual. There are also other periods of time where this
25 water is not needed by mutual and it is a supplemental

1 release. And what we feel is that the Seven Oaks Dam
2 provides an opportunity to reregulate those releases once
3 they reach the downstream reservoir so that they can
4 subsequently be delivered to mutual as part of their water
5 supply or be delivered to replenishment basins to get full
6 credit in their basin makeup account. So the potential
7 exists for improved operation of those releases for fish
8 protection.

9 As the owner of the dam, Big Bear also has the
10 responsibility for flood control. They need to protect the
11 shoreline of Big Bear Lake. They need to prevent
12 overtopping of the dam and they need to protect the
13 downstream property owners from catastrophic floods. Their
14 goal is to provide these flood control benefits. But
15 because the lake stabilization program is increasing the
16 lake levels, there is an increased probability of spills.
17 In fact, spills will occur more often under the lake
18 stabilization program than it would without the lake
19 stabilization program.

20 So Big Bear has the need to most effectively manage
21 those flood control releases. In fact, their preference is
22 to release water in periods where it can beneficially be
23 used rather than be spilled in a noncontrolled manner. So
24 their goal to better manage these flood control releases
25 would provide additional benefits because these releases

1 could then be credited to the basin compensation account if
2 they can be captured and recharged rather than through
3 uncontrolled spills.

4 Seven Oaks Dam provides an opportunity for further
5 improvement of the management of those flood control
6 releases. And in the event that those releases can't be
7 fully managed to the benefit of Big Bear Municipal Water
8 District they then can be used by other downstream water
9 users for their beneficial uses. So, as a result of those
10 benefits, the district believes that there is an opportunity
11 for better management of the resources of the waters of Big
12 Bear Lake, and as a result they do not object to revising
13 the declaration of fully appropriated streams to allow
14 processing of the two specified applications to appropriate
15 water in the Santa Ana River.

16 However, we respectfully request that the State Board
17 require three things. One, that the 1977 judgment be fully
18 recognized and complied with to protect the rights of the
19 parties of the judgment. Two, that Big Bear rights to
20 manage their available resources to provide the water
21 supply, recreational, environmental, fishery and flood
22 control benefits not be adversely affected and preferably
23 enhanced. And, three, that any future proceedings be
24 limited to the two specified applications.

25 Thank you, and that concludes our statement.

1 H.O. BAGGET: Thank you.

2 Mr. O'Brien.

3 MR. O'BRIEN: No questions.

4 H.O. BAGGET: Mr. McNevin.

5 MR. MCNEVIN: Thank you.

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7 CROSS-EXAMINATION OF BIG BEAR MUNICIPAL WATER DISTRICT

8 BY ORANGE COUNTY WATER DISTRICT

9 BY MR. MCNEVIN

10 MR. MCNEVIN: I am Chris McNevin, again.

11 Good morning, Mr. Evenson. How many years of
12 experience do you have in the field of water resources?

13 MR. EVENSON: Approximately 35.

14 MR. MCNEVIN: Can I ask you for your indulgence for a
15 minute to help me out with this rule of seven that Mr. Drury
16 didn't know about? Can you please explain that to Board?

17 MR. EVENSON: That came about, I believe it was eight
18 or ten years ago, when I was working on a task force, a
19 statewide task force, to look at conjunctive use of
20 groundwaters and surface waters throughout the state of
21 California. Bill Mills was the chairman of that task force,
22 and we were looking at how all the groundwater basins could
23 be operated conjunctively with the state water system to
24 maximize the benefits to the state.

25 And in so doing we were looking at all the reservoirs

1 that were part of the State water project, and it was an
2 observation that I had made that it looked as if there was a
3 ratio of about seven for every acre-foot of water yield from
4 these reservoirs. It took about seven acre-feet of
5 storage.

6 MR. MCNEVIN: So that if you want to create a yield of,
7 say, 1000 acre-feet of storm flow what storage space do you
8 need in a reservoir?

9 MR. EVENSON: That would be about 7,000 acre-feet,
10 depending -- it would depend on the hydrology of the
11 particular watershed, the location of the dam. But that
12 seemed to be a general number that was applicable when we
13 were doing the study.

14 MR. MCNEVIN: By storage, you are not referring to
15 underground storage space in an aquifer; you are referring
16 to surface storage in a reservoir?

17 MR. EVENSON: Correct.

18 MR. MCNEVIN: Why does this rule apply in Southern
19 California?

20 MR. EVENSON: It could apply in some of the mountainous
21 areas. For example in Big Bear the ratio is a little bit
22 higher than seven. I think that the number is closer to 11
23 or 12.

24 MR. MCNEVIN: What's the theoretical underpinning of
25 the observation? Why do you need so much storage space to

1 capture -- why do you need seven times the amount of storage
2 space for one acre-foot of water?

3 MR. EVENSON: For two reasons. One, for regulatory
4 water to carry over between dry years and wet years and to
5 accommodate evaporation losses that occur from the
6 reservoirs.

7 MR. MCNEVIN: Thank you. No more questions.

8 H.O. BAGGET: Mr. Cosgrove.

9 MR. COSGROVE: No questions. Thank you.

10 H.O. BAGGET: There are -- a number of other groups
11 seem to have left. One down, anyway.

12 City of San Bernardino.

13 MR. MOSKOWITZ: No.

14 H.O. BAGGET: East Valley.

15 MR. KENNEDY: No questions.

16 H.O. BAGGET: Inland Empire.

17 MR. CIHIGOYENETCHE: No.

18 H.O. BAGGET: Chino Basin.

19 Local Sponsors.

20 MR. DONLAN: No questions.

21 H.O. BAGGET: City of Ontario.

22 MR. GARNER: No.

23 H.O. BAGGET: Staff.

24 MS. MROWKA: I have no questions. I simply want to go
25 through their exhibit list before we move those.

1 H.O. BAGGET: Yes.

2 ----oOo----

3 CROSS-EXAMINATION OF BIG BEAR MUNICIPAL WATER DISTRICT

4 BY BOARD

5 MEMBER FORSTER: I have a question on your expertise on
6 this issue that you were just queried about. I am just
7 trying to understand this rule of seven.

8 That is not the only way to take water and move and put
9 it into like the Chino groundwater basin. Help me
10 understand what other ways would they -- would the person
11 from Inland, Dr. Drury, what other way would he be able to
12 put in storm water flows besides building a reservoir seven
13 to one?

14 MR. EVENSON: In the case of Chino Basin they would use
15 the existing replenishment basins where the seven to one
16 ratio would not apply.

17 MEMBER FORSTER: Thank you.

18 H.O. BAGGET: The exhibits.

19 MS. MROWKA: Yes. I have added to the exhibit list,
20 based on what your submittals were. The testimony of Donald
21 Evenson was not given an exhibit identification number. I
22 have labeled it Exhibit D.

23 The map which you just distributed, which I am
24 entitling "Key Facilities Related to Big Bear Judgment Map,"
25 Exhibit E.

1 MR. COSGROVE: Preliminarily we have agreed.

2 In lieu of the cross-examination of the witness from
3 East Valley Water District we have been provided a copy of
4 the document this morning that is entitled "Principles of
5 Agreement." We would like to submit that document as an
6 additional exhibit to this proceeding. It is our
7 understanding that this document has been reviewed
8 preliminarily by the East Valley Board and has been
9 approved, subject to subsequent changes by counsel and
10 general manager.

11 Beyond that, I do not know at this point whether it has
12 been reviewed by the Board for San Bernardino Valley
13 Municipal Water District nor Western. It is my
14 understanding it has not been approved by either one of
15 those Boards. So, with the understanding that this is not a
16 finally approved document, we would still like to submit it
17 as part of the record.

18 MR. O'BRIEN: I would stipulate to the submission of
19 the document into the record with those caveats as to the
20 lack of finality as to the agreement. And I would also
21 point out that this is a Principles of Agreement document
22 which contemplates the negotiation and execution of a
23 comprehensive agreement at some point down the road. So
24 this is the first step of a lengthier process.

25 MR. KENNEDY: Steve Kennedy on behalf of East Valley.

1 As I indicated yesterday afternoon, East Valley's action
2 yesterday was in good-faith reliance upon the
3 representations that were made to East Valley that that
4 document had the unanimous consent of each member of the
5 Board of Directors of Muni. With all Brown Act
6 considerations in place, East Valley withdrawal of its
7 objections to Muni's application or its petition was based
8 upon that representation.

9 I agree that to my understanding it hasn't been
10 formally approved by Muni's Board at this time, but we have
11 been advised that it has been consented to by each member of
12 Muni's Board.

13 H.O. BAGGET: With that, there is no objection. We
14 will enter it into the record.

15 MS. MROWKA: For record keeping purposes, this will be
16 Exhibit CD-20.

17 H.O. BAGGET: Okay. Going to proceed with rebuttal.

18 MR. O'BRIEN: Yes. We have prepared some rebuttal
19 testimony, some written testimony. There are six exhibits
20 which I have provided to Ms. Mrowka. I don't know if you
21 have had a chance to pass those out. Probably need to do
22 that.

23 H.O. BAGGET: Proceed.

24 MR. O'BRIEN: Ms. Mrowka, would it be helpful for
25 record keeping purposes to go through the exhibits and

1 indicate the numbers?

2 Mr. Frink is nodding his head, so I will do that.

3 Muni/Western Exhibit 8 is rebuttal testimony, and
4 there are three witnesses that are part of this: Mr. Beeby,
5 Mr. Reiter and Mr. Sam Fuller who was listed in our list of
6 intent to appear as expert.

7 The second document is a graph, Muni/Western Exhibit
8 Number 9, a graph entitled "Accumulated Departure from the
9 Mean Flow Near Mentone River Only, Water Years 1914-15
10 through 1997-98."

11 Muni/Western Exhibit 10 is another graph entitled
12 "Cumulative Flow at Mentone - Base Period May-December Flows
13 Only."

14 Muni/Western Exhibit 11 is a graph entitled "Cumulative
15 Flow at Mentone 1914-91, May-December Flows Only."

16 Muni/Western Exhibit 12 is a graph entitled "Cumulative
17 Flow at Mentone - Base Period March-May Flows Only."

18 Finally, Muni/Western Exhibit 13 is a graph entitled
19 "Cumulative Flow at Mentone 1914-91 - March-May Flows
20 Only."

21 MR. COSGROVE: May we get copies of everything?

22 UNIDENTIFIED VOICE: They are going around.

23 H.O. BAGGET: I think everybody is ready.

24 MR. O'BRIEN: Let's start with Mr. Beeby.

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REBUTTAL TESTIMONY OF
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT &
WESTERN MUTUAL WATER DISTRICT
BY MR. O'BRIEN

MR. O'BRIEN: Mr. Beeby, Muni/Western Exhibit 8 contains some rebuttal testimony from you. Have you had an opportunity to review that rebuttal testimony?

MR. BEEBY: Yes, I have.

MR. O'BRIEN: Is it true and correct to the best of your knowledge?

MR. BEEBY: Yes, it is.

MR. O'BRIEN: Could you please summarize the rebuttal testimony contained in Exhibit 8.

MR. BEEBY: Yes. As you may imagine, nothing quite attracts the attention of an expert or an engineer much like suggesting that his figures are wrong or if they are wrong that they were done intentionally to distort things. That's going to be the summary of two issues that we're raised yesterday by Mr. Headrick regarding my testimony, which he had to do --

MR. O'BRIEN: I think you need to turn the mike on.

MR. BEEBY: So the focus of my testimony is on those two areas where Mr. Headrick suggested I might have made errors in the hydrologic analysis. Those two areas have to do with the selection of base period and the lack of

1 seasonal evaluation to determine what flows might be
2 available in the months that are typically known as dry.

3 First, with regard to the base period, we did an
4 analysis last night of the river flows at Mentone only using
5 the same approach that we did for the combined flow which is
6 accumulated departure from the mean curve. I will not go
7 into all that derivation because I did that yesterday,
8 except to explain to you that this was for river only. And
9 the one that was presented yesterday was the combined flow.

10 One reason we did this was primarily to check what Mr.
11 Headrick had said, to evaluate whether or not that was
12 correct. But from a hydrologic standpoint, from an
13 engineering viewpoint, you typically do not take a
14 particular sub area, particularly a small one, and then
15 subdivide into even subareas to try to prove a particular
16 point. You are looking to try to determine what might be
17 available over a long-term average or probability of
18 exceedance. And depending on how complex and big the
19 hydrologic subarea is, you can subdivide that in a way to
20 get almost any answer you want.

21 I didn't want to get into that situation, which is why
22 I took the entire watershed upstream of Mentone for the
23 preliminary analysis.

24 My Exhibit 9 depicts the accumulated departure from the
25 mean curve for the river only near Mentone. This is for the

1 same period of record that we analyzed the combined flow for
2 1914-15 through 1997-98.

3 Again, the shape of the curve is quite similar to the
4 combined flow, and the long-term average for that period
5 depicted on this graph is 25,700 acre-feet. The selected
6 study period that I used and testified about yesterday is
7 the 1971-72 through 1990-91 water year period. And as you
8 can see there is a slightly higher average amount during
9 that period of time. Graphically, that is indicated by the
10 fact that at the beginning of the period the curve is higher
11 at the end of the period indicating that was slightly wetter
12 than the normal period.

13 So to that extent, Mr. Headrick is correct that our
14 base period is slightly wetter than the long-term average.

15 If you take that into account, it is about 8 percent
16 higher than what I testified to yesterday.

17 MR. O'BRIEN: Sorry, that last statement was confusing
18 to me, Mr. Beeby.

19 MR. BEEBY: Excuse me, the average, long-term average
20 for the Mentone only flow, which is the 27,800 that I used
21 in the analysis yesterday, is about 8 percent higher than
22 the actual long-term average at that particular gauge,
23 indicating that that was slightly wetter than what I used
24 yesterday by on the order of 8 percent. If you utilize that
25 8 percent to extrapolate what the potential diversion might

1 be, and recognizing that the period that I used is wetter,
2 if we use the long-term average instead of my period, my
3 flows would be reduced by about 8 percent.

4 So, instead of being on the order of 260,000 acre-feet,
5 they might drop to about 240,000 acre-feet. Now, that's the
6 arithmetic of the situation. But, again, as I testified to
7 later, yesterday, what my objective was was to indicate that
8 there is a large amount of potential diversion available by
9 Muni and Western. That conclusion is unchanged and 240,000
10 or almost a quarter of a million acre-feet of potential
11 diversion at Mentone to me is a significant amount, and I
12 would not alter my conclusion as a result of this analysis.

13 I might also point out that the figure I just reported
14 about, which is 240,000 acre-feet or about a quarter million
15 acre-feet of flow during the 20-year base period on an
16 accumulated basis, could still increase if it were not
17 constrained by the 500 cfs that I used in analysis, which I
18 explained yesterday as limitation on the release from Seven
19 Oaks Dam, or the hundred thousand acre-foot annual diversion
20 amount to be utilized by Muni. If those two factors change
21 and it went much higher, then, obviously, the quarter
22 million acre-feet would go higher.

23 But still I am not trying to pick numbers here with 2-
24 or 3,000 acre-feet. It is significantly higher than what's
25 historically been diverted. I might add, this does reflect

1 the upstream diversions at this point. So all those
2 upstream senior water right claimants have had their demands
3 taken out of this analysis.

4 The second area that was challenged yesterday was the
5 fact that my analysis or that I had not analyzed it on a
6 seasonal basis. And during cross-examination I explained to
7 Mr. Cosgrove that my analysis was done on a monthly basis,
8 but it was monthly by year and not segregated into the
9 portions of the year he was concerned about, which is
10 typically the dry periods of the year.

11 So to address that question, and we had the data
12 available to do so, we prepared Western/Muni Exhibit 10.
13 Now, the color registration, I might point out, is not quite
14 the same on the overhead screen as it is in your graph, I
15 will refer to the colors on the hard copy for purposes of
16 following this along.

17 This is the cumulative flow during the base period,
18 considering only the flows that occur through May and
19 December. You will note that the bottom scale says year May
20 to December only, and in this case I am not using water year
21 because that period overlaps two water years. So, rather
22 than confuse the issue, or in an attempt not to confuse the
23 issue, I have just used the year analysis.

24 These are the cumulated flows for a particular year
25 during the May to December months. Again, the area shown

1 here is kind of tan, but actually the hard copy on Exhibit
2 10 shows it as blue, shows that there is about 107,500
3 acre-feet of cumulative water diversions by the Conservation
4 District. That is this lower portion of the graph.

5 The upper line on the graph is the combined flow at
6 Mentone reduced by the upstream diversions to the Southern
7 Cal Edison canal. Recall that diversion is to satisfy the
8 senior water right claimants upstream.

9 The yellow area has potential diversion by
10 Western/Muni, again, only May through December months.
11 Still a fairly substantial portion of water, 71,000
12 acre-feet. You divide that 71,000 acre-feet by roughly the
13 20-year base period, you are getting on the order of 3500
14 acre-feet annually of average diversions. Here I am jumping
15 back to average even though I don't think that is the proper
16 way to evaluate it.

17 Next I prepared Exhibit 11, which is essentially the
18 same type of analysis except that it extends the study
19 period over the period of record, from 1914 through
20 1989-91. Actually, that is what that is supposed to be.
21 '91 is the ends year here. The reason we went to '91, I
22 will state right now, is because we did not have available
23 to us in the hotel last night the monthly data after 1990,
24 because that was the end of my historical base period. So,
25 we've cut this off in 1990.

1 These are not exactly equivalent to what was presented
2 yesterday, and I take the long-term average amounts.
3 Nevertheless, what this does show is the cumulative
4 historical diversions, again, during May through December
5 period, for the Conservation District have accumulated
6 217,000, which is this mauve area, which is blue on the hard
7 copy. Again, the top part of the curve is labeled "The
8 Combined Flow at Mentone Reduced by the Upstream Diversions
9 to Southern Cal Edison Canal," showing the potential
10 diversion by Muni/Western over this rather lengthy base
11 period of 500 -- almost 509,000 acre-feet. Still a
12 significant amount. Still reflecting the areas where there
13 are spikes, which is actually what we are trying to capture
14 in our -- through the use of the direct diversion.

15 Another part of my testimony that I really didn't
16 testify to, but Mr. Headrick raised during his direct
17 examination, was the use of a conservation pool at Seven
18 Oaks Dam. So I did take a shot on the doing that, and
19 estimated from March to May what the flows might be, which
20 would be the period that the conservation at Seven Oaks
21 might be utilized.

22 In that or to illustrate that I have also prepared
23 Exhibit 12. Again, this is for the base period that I used
24 from 1972 to 1991, the same essential description in terms
25 of the formatting. The flows change because the difference

1 here is the months have changed. March flows have jumped
2 now for the Conservation District cumulative over the
3 20-year period up to 107,000 acre-feet. The total flows,
4 way up here, the potential diversion by Western/Muni is
5 172,00 acre-feet. Again, that is a significant amount.

6 You might ask if you are thinking about the graph I
7 used previously, why there is such a huge amount more. This
8 average is, if you take the 172 and divide that by 20, you
9 are getting a little over 8,000 acre-feet average during
10 that period. The principal difference is that there is such
11 high flows in March that it distorts these, and it is the
12 March flows that are affected by snowmelt and heavy runoff.
13 That was not included in the previous graph which went from
14 May to December. That is the main difference why there is a
15 huge difference, showing the sensitivity, what period you
16 use.

17 Now, Exhibit 13, and I will cut right through this one
18 because it is essentially the same type analysis. We just
19 extended the base period. Again, these are cumulative
20 flows. Conservation District 320. Available potential
21 diversions by Muni up to 635,000, almost 636,000 acre-feet.

22 Again, the point of all this is to illustrate that
23 there is a significant amount of flow available at Mentone
24 that has not been historically diverted and could be
25 potentially diverted by Muni/Western.

1 I would like to summarize my rebuttal testimony by
2 pulling up Exhibit 4-12 which was presented yesterday. As
3 you heard me testify yesterday, there is a caution, if not a
4 strong warning with explanation points and all bold, about
5 using averages to evaluate the potential for diversions.
6 This jumps back to the probability of exceedance. And what
7 is happening here, and the reason those flows are
8 accumulated in the previous graphs, we are looking at this
9 period where 26 percent of the time the flow is greater than
10 the average. That 26 percent of the time where the flow is
11 greater than the average is precisely the types of flow that
12 we are trying to capture through these diversions. Again,
13 this is not inconsistent with this analysis, and it does
14 illustrate the danger of trying to use averages to establish
15 policy.

16 And with that, I'll conclude my testimony.

17 MR. O'BRIEN: Just one follow-up question. Is it your
18 understanding that Mr. Headrick did use averages in the
19 analysis that he performed?

20 MR. BEEBY: Yes, it is my understanding that is
21 precisely what he did.

22 MR. O'BRIEN: Thank you.

23 Mr. Reiter, starting at Page 5 of Exhibit 8 is some
24 rebuttal testimony from you. Have you had an opportunity to
25 review that?

1 MR. REITER: Yes, I have.

2 MR. O'BRIEN: Is it true and correct, to the best of
3 your knowledge?

4 MR. REITER: I had one correction. Under Item 3, Line
5 4, the last word says "purchased." The correct term should
6 be "acquired." I am sure the City of San Bernardino would
7 like to send us an invoice. Point of fact, they provide it
8 at no charge.

9 MR. O'BRIEN: Could you please summarize your
10 testimony.

11 MR. REITER: Thank you. The Conservation District has
12 argued in their case in chief that our petition and
13 application, therefore, should be denied because there is no
14 new water in the area above Seven Oaks. I believe this
15 argument is based on the fundamental misunderstanding just
16 as to how the Santa Ana River system works, both in the
17 physical, institutional and legal standpoint.

18 The Orange County Judgment and within the Western
19 Judgment provided an integrated fashion for the Santa Ana
20 River to operate in the future, as it has since 1969 when we
21 reached the settlement. Under that judgment, as I indicated
22 yesterday, Muni is obligated to deliver 15,250 acre-feet of
23 base flow at Riverside Narrows. We can use water from any
24 source to meet that base flow. As part of the 1969
25 settlements, the districts entered into contracts. One in

1 1969 with the City of San Bernardino and one in 1972 with
2 the City of Colton for wastewater quantities to be dedicated
3 to this activity.

4 I believe San Bernardino yesterday in their direct
5 testimony indicated that in point of fact part of water that
6 was not available for sale to their private water company
7 with whom they have been negotiating was 16,000 acre-feet
8 per year. That is the amount contained in the contract
9 between Muni and City of San Bernardino. Likewise, we have
10 a contract with the City of Colton for a quantity on the
11 order of 2400 acre-feet per year.

12 Further, I would like to note for the record that there
13 are no diversions, surface diversions, from the Santa Ana
14 River between the Greenspot Road Bridge, which is
15 downstream of the Conservation District's point of diversion
16 and Riverside Narrows. As Mr. Beeby has just described,
17 there is significant quantities of water passing all of the
18 points of diversion of senior water right claimants,
19 including the Conservation District, and quantities that are
20 probably worth acquiring.

21 We believe that the existence of Seven Oaks Dam will
22 provide the physical ability to divert those flows. The dam
23 will have a regulating affect on the rate of flow. You've
24 heard testimony in the past that flow rates at that point
25 can be in the order of 60,000 or more cubic feet per

1 second. Clearly, nobody is going to build a pipe big enough
2 to move 60,000 cubic feet per second when it occurs very
3 infrequently. However, if you have a regulating benefit of
4 a dam to reduce that rate of flow, we believe that is a goal
5 that is worth working toward.

6 Capturing that water would not have any effect, adverse
7 effect, on meeting the district's obligation at Riverside
8 Narrows due to the use of wastewater pursuant to contracts
9 already in existence, which have been in existence for 30
10 years, just slightly less than 30 years.

11 To summarize, the notion that we must prove that there
12 is, if you will, brand-new water above the dam in order to
13 pursue the right to divert water in the vicinity of the dam
14 we believe is inconsistent with the manner in which the
15 river system actually operates from a physical,
16 institutional and legal standpoint.

17 If the Board were to determine that the only water that
18 could be diverted from Seven Oaks were, in fact, newly
19 minted water, if you will, to the area upstream, we believe
20 that would result in an irrational limitation on the ability
21 of Western and Muni to fully utilize the natural resources
22 from this area pursuant to the rights that we believe we
23 acquired under Western and Orange County settlements.

24 Thank you for your time.

25 MR. O'BRIEN: Mr. Fuller, starting at Page 7 of Exhibit

1 8, is your rebuttal testimony. Have you had an opportunity
2 to review that?

3 MR. FULLER: Yes, I have.

4 MR. O'BRIEN: Is it true and correct to the best of
5 your knowledge?

6 MR. FULLER: Yes, it is.

7 MR. O'BRIEN: Would you please summarize that testimony
8 for us.

9 MR. FULLER: Yes. Yesterday in Mr. Headrick's
10 testimony he suggested that Mr. Beeby did not properly
11 account for the water being diverted by Bear Valley Mutual
12 Company at the auxiliary diversion point near powerhouse --
13 the old Powerhouse Number 3.

14 I think, believe Mr. Beeby and Mr. Van reported that
15 inspection of U.S. Geological Survey records indicated that
16 during the period of study that Mr. Beeby had used, the
17 auxiliary diversion was used infrequently and the amount of
18 that assumption might result in a 5 percent difference in
19 the numbers.

20 I think Mr. Headrick also suggested Bear Valley may in
21 the future use this auxiliary diversion point to a greater
22 extent. And I think what Mr. Headrick was getting at is
23 that as part of the construction of Seven Oaks Dam, Southern
24 California Edison Company relocated Powerhouse Number 2 to
25 the present location of Powerhouse Number 3. And in doing

1 that they constructed a pipeline from Powerhouse Number 2 to
2 forebay all the way down to what was the old Powerhouse
3 Number 3 and renamed Powerhouse Number 3 Powerhouse Number
4 2. In doing that they destroyed a well at the old
5 Powerhouse Number 2 that intercepted underflow from the bed
6 of the Santa Ana River and pumped that into the penstocks
7 that led to Powerhouse Number 3 then. That well produced,
8 when first started, about two and a half cfs and quickly
9 tapered off to about 1.8 cfs. I've shown it about 2 here.

10 Bear Valley will continue to divert that underflow when
11 needed for their uses through the auxiliary gauge, because
12 as the water flows in the bed of the Santa Ana River, it
13 runs into the Seven Oaks Dam core trench and it pools up
14 behind the dam and eventually flows out through the outlet
15 works. Bear Valley will be able to divert that water as
16 surface flow from the outlet of Seven Oaks Dam in those
17 years when they need it to supplement their flows coming
18 down through the penstock, where they get the majority of
19 water.

20 So, Bear Valley also has another interception gallery,
21 or infiltration gallery, in the streambed near Greenspot
22 Road Bridge. This is called the Redlands Tunnel. That
23 Redlands Tunnel -- the water that would have historically
24 been diverted from Redlands could also be diverted through
25 the auxiliary gauge. That flow rate is approximately 2 cfs

1 nearly year-round. So Bear Valley will probably, and this
2 is speculation on my part as well as Mr. Headrick's,
3 probably pick up the 4 cfs at the auxiliary diversion to
4 supplement their flows in the Edison system as needed.

5 Again, as documented in USGS records and as mentioned
6 yesterday by Mr. Beeby and Mr. Van, the auxiliary gauge has
7 not been used frequently during the study period that we
8 have used, and so it does not result in a serious error, a
9 significant error, in the period of study that we used.

10 So, in sum, Mr. Headrick may be correct in suggesting
11 that Bear Valley will continue to take water there. But the
12 amount of water they take there should not seriously affect
13 the diversions available to the San Bernardino Valley
14 Municipal Water District and Western Municipal Water
15 District.

16 This concludes my presentation.

17 MR. O'BRIEN: Thank you.

18 That concludes our rebuttal testimony.

19 H.O. BAGGET: Any questions? See if everybody --
20 Orange County.

21 MR. MCNEVIN: No.

22 H.O. BAGGET: San Bernardino.

23 MR. COSGROVE: Yes.

24 ----oOo----

25 //

1 CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF
2 SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT &
3 WESTERN MUTUAL WATER DISTRICT
4 BY SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
5 BY MR. COSGROVE

6 MR. COSGROVE: Mr. Beeby, I guess I will start with
7 you. You originally defined the base period as
8 representative for future flows in part because you
9 concluded that that base period was conservative; isn't that
10 what you testified to?

11 MR. BEEBY: Yes. Yes, I did.

12 MR. COSGROVE: Now you are telling us, essentially it
13 seems to me, acknowledging that the flows on which you
14 based the amount of water that is available, that was
15 actually wetter than average as opposed to the drier than
16 average which led you to conclude that the base period was
17 conservative?

18 MR. BEEBY: I would not agree with that. What you are
19 doing is mixing apples and oranges. My analysis was based
20 on the combined flow which, in fact, is conservative in that
21 it slightly underestimated the long-term average. I do not
22 necessarily agree with the approach that you can subdivide
23 this basin into a smaller area in order to illustrate a
24 different effect.

25 It is correct, however, that if you take the river only

1 gauge, the base period, the 1971-72 through 1990 base
2 period, is approximately 8 percent wetter than the long-term
3 average.

4 MR. COSGROVE: Apples and oranges, Mr. Beeby, is
5 entirely the point. Because the base period was defined
6 with all three gauges, and yet the amount of water that was
7 available was taken from two. All three gauges showed a dry
8 period, but when you looked at the two gauges, which led to
9 the conclusions of available water, that was a wet period?

10 MR. BEEBY: No. That is precisely why you don't
11 separate these things into small subareas. What we are
12 trying to estimate is a reasonable base period to use for
13 the entire upstream portion of the Santa Ana River system,
14 upstream from Mentone. So, you can -- we can make this
15 argument about whether it is appropriate to use smaller
16 subareas, but I just don't agree that that is the proper
17 approach. And if it were, we are only talking take an 8
18 percent difference, anyway.

19 MR. COSGROVE: Regardless of the propriety of dividing
20 subareas, did you or did you not take your quantities of
21 water available from the two gauges that you -- whose
22 analysis you presented to us for the first time this
23 morning? It was the auxiliary gauge and the Mentone gauging
24 station?

25 MR. BEEBY: Yes. The numbers that I --

1 MR. COSGROVE: That is all I need to know.

2 MR. O'BRIEN: I think the witness should be entitled to
3 complete his answer to the question.

4 MR. COSGROVE: I think he did.

5 MR. O'BRIEN: I think you interrupted him.

6 H.O. BAGGET: Allow the witness to finish.

7 MR. COSGROVE: Go ahead.

8 MR. BEEBY: The numbers I presented this morning were
9 the combined flow readings, gauge readings, that I testified
10 to yesterday less the upstream diversions.

11 MR. COSGROVE: Less the SCE flows?

12 MR. BEEBY: Yes.

13 MR. COSGROVE: And if I understand the charts that you
14 presented today correctly, what you've done is adjusted it
15 for that 8 percent difference between the -- well, you
16 identified an 8 percent difference; is that correct?

17 MR. BEEBY: 8 percent difference is between the
18 long-term average and the average flow during the 1971 to
19 1972 base period?

20 MR. COSGROVE: Do you believe it is appropriate to
21 extrapolate that 8 percent reduction in the overall flows
22 from cumulative based on that 8 percent conclusion that you
23 reached with regard to what I characterize as the wetter
24 nature of the flows at the two gauges from which you based
25 your estimate of available water?

1 MR. BEEBY: Well, the reason I did the adjustment on
2 the cumulative was to give an order of magnitude estimate of
3 what the effect might be. So I think the answer to your
4 question is yes. What I did was just take that off of the
5 total cumulative. The charts that are shown up there are
6 not adjusted. Those are the raw data.

7 MR. COSGROVE: My question, I suppose, then becomes do
8 you still believe that the base period that you selected is
9 appropriate for predicting the amounts of flows that are
10 prospectively and presently available at the Santa Ana River
11 near Mentone?

12 MR. BEEBY: To answer that question I have to come back
13 to the idea that the selected period that I used to study
14 this is based on that. That is the fact; that is what I
15 used. I also indicated in response, I think, to a Board's
16 question yesterday that I may take a look at a different
17 study period as we get down to the application process.
18 Because my objective in this level or at this phase of the
19 investigation was not to precisely quantify what the
20 potential diversion might be, but merely to indicate that it
21 is a large amount, significantly greater than what has
22 historically been diverted and that the moment of those
23 potential diversions by Muni/Western would not affect
24 historical diversion and would not affect negatively the
25 terms and conditions of the Orange County Judgment.

1 MR. COSGROVE: So that the base period may vary
2 depending on the objective of the study?

3 MR. BEEBY: That is not correct.

4 MR. COSGROVE: The use -- you previously used monthly
5 averages you said in the direct exam. You used monthly data
6 which you collected by years as opposed to month. Is that a
7 fair characterization?

8 MR. BEEBY: No.

9 MR. COSGROVE: Explain to me -- because you did use
10 monthly data in your original direct exam?

11 MR. BEEBY: Correct. Let me explain the full process.
12 We had either data from the Conservation District or data
13 from the USGS gauging stations. USGS gauging stations are
14 typically reported in average daily flows, so many cfs per
15 day. To get those to monthly basis, typically, you can take
16 those cfs days and convert them to the number of acre-feet
17 that would occur in that month based on the number of days
18 in that month. That was our starting point. So that is how
19 we used the monthly flows.

20 Now, when I report the annual flows, both today and
21 yesterday, that is the sum of 12 months that are included in
22 water year from October 1st through September 30th.

23 MR. COSGROVE: The base data was still monthly?

24 MR. BEEBY: Which is derived from average daily, yes.

25 MR. COSGROVE: You have criticized, I think again

1 today, the use of the Conservation District of monthly
2 average flows. That is correct?

3 MR. BEEBY: No. I haven't criticized the use of
4 monthly average flows. I criticized their use of averages
5 in trying to characterize a long-term period of record.

6 MR. COSGROVE: I would understand that to be the same
7 thing. Thank you for the clarification.

8 But the point being that you believe that, for example,
9 the chart that was shown by Conservation District which
10 showed the monthly flows in the river by average, that that
11 was an inappropriate analysis, correct?

12 MR. BEEBY: Yes. Because it was the average of a 12-
13 or 15-month period to show that the average flow in May, for
14 example, is some number. Yes, that is inappropriate.

15 MR. COSGROVE: I think you testified earlier that the
16 better way to do that would be to show an exceedance curve
17 when those flows will be exceeded or probability of
18 exceedance curve?

19 MR. BEEBY: I suggested that the probability of
20 exceedance curve is used as another tool to help people
21 understand the reliability of supply. I still think the
22 best way to do it is take the historical record, as I have
23 done in these exhibits presented today, and determine how
24 much water can be scalped in the months where there is
25 excess flows that are not historically diverted.

1 MR. COSGROVE: Have you used that tool in any way to
2 assess how often the types of peak flows that you that can
3 scalp occurred on a monthly basis?

4 MR. BEEBY: I have not done probability of exceedance
5 on a monthly basis.

6 MR. COSGROVE: Mr. Reiter, a couple questions for you.
7 Do I understand correctly from your testimony in paragraph
8 -- forgive me for just a second. Under Paragraph 6 you say,
9 to summarize, the notion that Muni/Western must establish
10 the existence of new water upstream of Seven Oaks Dam in
11 order to pursue a right to divert water in the vicinity of
12 the dam is inconsistent with the manner in which the Santa
13 Ana River system functions from a physical, institutional
14 and legal standpoint.

15 Is that an accurate statement of your understanding of
16 your testimony here today?

17 MR. REITER: That's what the testimony is.

18 MR. COSGROVE: I believe you said that to even suggest
19 that would impose an irrational limitation on these
20 proceedings and the results?

21 MR. REITER: I believe so, based on our testimony of
22 Mr. Beeby there has been water that has not been previously
23 used.

24 MR. COSGROVE: Have you reviewed the file with respect
25 to the application that your agency has made that is here,

1 kept here with the State Board?

2 MR. REITER: Some time ago.

3 MR. COSGROVE: Were you present at a meeting with
4 Melanie Collins on June 13, 1997, which apparently included
5 Mr. O'Brien, Mr. Fuller, Curtis Van, and included Melanie
6 Collins and a number of other people from the State Board
7 staff discussing this petition?

8 MR. REITER: I believe I had been at all meetings that
9 we had with staff, Board staff.

10 MR. COSGROVE: Do you recall any discussion from the
11 State Board in connection with any of those meetings where
12 your agency was told to find the source of the water that
13 Orange County Water District says is wasting to the ocean
14 and that if none of it is coming through the Seven Oaks Dam
15 and coming from a downstream tributary instead, then amounts
16 recorded at Ball Road would have no use to SBV and MWD?

17 MR. O'BRIEN: Excuse me, Mr. Bagget. He seems to be
18 reading from a document. I think it is only fair that the
19 witness have a chance to see this document.

20 H.O. BAGGET: I would agree.

21 MR. COSGROVE: That is fine.

22 I will show it to you first. It is my only copy. This
23 is a document that comes from a file, dated June 13th, I
24 believe, 1997. It is a memorandum entitled "Contact Report"
25 from the Division of Water Rights.

1 Would you like to see this before?

2 MR. O'BRIEN: I am going to object to the introduction
3 of this document on grounds of no foundation or
4 authenticity. I think it is irrelevant to this proceeding
5 and it is hearsay. Ms. Collins is not here. She is the
6 author of the document. She is not here for me to
7 cross-examine. I think it is inappropriate for him to
8 question this witness about a document prepared by someone
9 else about contents of a meeting.

10 MR. COSGROVE: I would like to be heard on that.

11 MR. FRINK: I could answer the question he just
12 raised.

13 MR. COSGROVE: Go right ahead.

14 MR. FRINK: The document was included in a file that
15 was already in as Staff Exhibit 1. At the time that that
16 was accepted into evidence the Hearing Officer indicated
17 that he would respect the limitations on use of hearsay that
18 are set forth in Board regulations. It is in the record
19 already.

20 MR. O'BRIEN: Nonetheless, I stand by my hearsay
21 objection and my other objections. I move to strike the
22 document on that basis.

23 MR. COSGROVE: Under Government Code 11513(D),
24 hearsay can be used so long as it is not being used as an
25 independent to support independent point, but it is

1 permissible to be used.

2 In addition, what we are going for here is basically it
3 is inconsistent with the testimony currently on what is to
4 be required is inconsistent with the direction, under at
5 least under this memo, the Board has given as to what needs
6 to be established, and I don't see where that is
7 inadmissible in any respect in this proceeding.

8 MR. O'BRIEN: I just think it is irrelevant to hear the
9 thoughts and opinions of a staff member of this Board who is
10 no longer involved in this process, no longer employed with
11 the Board as to what the requirements of the Board
12 purportedly were with respect to this proceeding. It is
13 completely irrelevant to what we are trying to accomplish
14 here.

15 MR. FRINK: I think there is a question of relevancy.
16 The author of the memorandum isn't here and unable to give
17 her opinions on it. And, in any event, the opinions of a
18 former staff member do not represent the opinions of the
19 Board. If you want to quickly ask Mr. Reiter if he agrees
20 with the particular statement, that may clarify it. I
21 wouldn't spend a lot of time on it.

22 MR. COSGROVE: What I wanted to ask him was whether it
23 was instructed at anytime by the Board to address this issue
24 as part of these proceedings or whether anyone from his
25 agency was instructed to do so as part of these proceedings.

1 MR. O'BRIEN: The question was whether the Board
2 instructed him or whether Ms. Collins might have instructed
3 him. I think there is an important difference.

4 MR. COSGROVE: The Board or its staff.

5 MR. FRINK: A staff member does not speak on behalf of
6 the Board. If you want to ask the witness if he agrees with
7 what Ms. Collins stated there, you can ask that. That is
8 about as far as it will go.

9 H.O. BAGGET: I would concur.

10 MR. COSGROVE: I would like to make an offer of proof
11 on that before further questioning is not permitted.

12 That offer would be that instructions that were
13 received by this applicant from staff acting in the normal
14 course of its business, I believe, are relevant to the
15 issues that are raised by the petition. Certainly, it is
16 relevant to the contention that a fundamental basis on which
17 much of my client's testimony is directed and taken from
18 this staff report. As an indication of what the Board staff
19 is interested that the evidence needs to be directed to is
20 appropriate. And for the applicant to come in now and say
21 that this type of analysis is irrational and completely
22 wrong, when the State Board's own memoranda say whether or
23 not it is binding on the Board or whether or not it is a
24 final determinative issue, that it is relevant to the
25 proceeding and that that has to be shown. I think that that

1 belongs as part of this proceeding.

2 And, therefore, I would like to request that that line
3 of questioning be permitted and that the contact report
4 remain an exhibit and that it not be stricken.

5 MR. O'BRIEN: I don't know if that is an offer of proof
6 or a motion to reconsider. But you have ruled on his
7 objection. If the chair is not inclined to change his
8 ruling, I have nothing further to say.

9 If you want to hear argument in response to that, I
10 would be glad to address it.

11 H.O. BAGGET: Off the record.

12 (Discussion held off the record.)

13 MR. FRINK: Mr. Bagget, after looking at the contact
14 report, it does appear to represent a statement of a staff
15 member at the time. The document has already been admitted
16 into the record as part of Staff Exhibit 1. I believe that
17 the witness has made it clear in his testimony this morning
18 that he disagrees with the analytical approach that that
19 staff member suggested in the contact report. Both pieces
20 of evidence are in the record. I think belaboring it
21 further is repetitious and irrelevant, and for that reason
22 should not be allowed. We should not spend any more time on
23 it today.

24 MR. COSGROVE: And that hint is taken. I will move
25 on. I do want to make sure that this contact report has not

1 been stricken from the record.

2 H.O. BAGGET: The contact report was admitted to the
3 record yesterday, so it remains in the record. But I will
4 sustain the objection.

5 MR. COSGROVE: No further questions.

6 Thank you.

7 My only other question would be for Mr. Fuller.

8 Mr. Fuller, are you aware whether the facilities that
9 Bear Valley uses to take water off of what you have called
10 the auxiliary diversion point has been modified any time
11 recently?

12 MR. FULLER: Yes, they have been modified.

13 MR. COSGROVE: As I understand it, those facilities
14 have been modified to include two 40-inch pipes. Is that
15 accurate?

16 MR. FULLER: I actually think they are two 48-inch
17 diameter culverts under the access road that the Corps of
18 Engineers left in the canyon for their accessibility to the
19 dam, yes.

20 MR. COSGROVE: What's the combined capacity of those
21 two 48-inch culverts?

22 MR. FULLER: I don't know the answer to that question,
23 assuming other factors involved for me to give you an answer
24 to that.

25 MR. COSGROVE: There is not a design capacity of those

1 pipes that you are aware of?

2 MR. FULLER: I don't know who would have done that work
3 to design those, no.

4 MR. COSGROVE: I don't have any further questions.

5 H.O. BAGGET: Thank you.

6 City of San Bernardino.

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8 CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF

9 SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT &

10 WESTERN MUTUAL WATER DISTRICT

11 BY THE CITY OF SAN BERNARDINO

12 BY MR. MOSKOWITZ

13 MR. MOSKOWITZ: I am Joel Moskowitz. Again, I have a
14 couple clarifying questions for Mr. Reiter.

15 Mr. Reiter, turning back to Paragraph 3 on Page 5 of
16 the rebuttal submission. You stated here that Muni entered
17 into contracts with the cities of San Bernardino and Colton
18 to obligate specified quantities of water discharged from
19 the cities' treatment plants. Now these contracts were
20 entered into in '69 and '72.

21 Is that your understanding, you still don't get it from
22 two different plants nowadays?

23 MR. REITER: No, that's correct, there were two plants
24 at the time the contracts were entered in.

25 MR. MOSKOWITZ: Today, however, you get all the water

1 from the RIX plant?

2 MR. REITER: That's correct.

3 MR. MOSKOWITZ: Do you know how much water you purchase
4 from the City of San Bernardino from that plant?

5 MR. REITER: If you recall my opening statement, I
6 changed that word from "purchased" to "acquired." There is
7 a quantity of 16,000 acre-feet from the City of San
8 Bernardino. I believe it is 2400 acre-feet from the City of
9 Colton.

10 MR. MOSKOWITZ: That was my next question. The City of
11 Colton is 2400 acre-feet. Let me get on to the acquired
12 versus purchased. Isn't it true that the City of San
13 Bernardino can, under specified circumstances, get a credit
14 for state project Water under that contract in return for
15 that supplied water?

16 MR. REITER: Yes.

17 MR. MOSKOWITZ: Could you explain those terms?

18 MR. REITER: This is the best of my recollection. It's
19 been a while since I read the contract.

20 The City of San Bernardino and the City of Colton were
21 subject to pumping limitations under an old case, Orange
22 County versus City of Riverside, et al., of which San
23 Bernardino, Colton and Redlands were part of the "et al.,"
24 which limited their pumping. Under the 1969 Orange County
25 Settlement that was one of two judgments affecting our area

1 which Orange County is prohibited from enforcing, provided
2 the base flow requirements are met.

3 The provision of state project Water to San Bernardino
4 is conditioned on the fact that if somebody subsequently or
5 some party subsequently in judicial action manages to limit
6 San Bernardino's water to a quantity of less than a quantity
7 they are limited by under the Orange County Settlement, the
8 district agreed to provide state project Water at no
9 charge.

10 MR. MOSKOWITZ: That was in consideration in part for
11 the supplying of wastewater at Riverside Narrows; was it
12 not?

13 MR. REITER: I think there were two facets there. One
14 was by district's accepting the obligation to meet the base
15 flow requirements that allowed San Bernardino to have their
16 limitation lifted; and the other part of the action was,
17 yes, if somebody independently succeeded in limiting San
18 Bernardino's right to produce from the San Bernardino Basin
19 that our district would provide, at no charge, provide state
20 project water. Yes, it was basically an exchange for the
21 wastewater.

22 MR. MOSKOWITZ: There are other things that might
23 restrict San Bernardino's production of groundwater, aren't
24 there, such as contamination or prior rights or other
25 things? It is not just limited to that judgment?

1 MR. REITER: There are other things that would limit
2 their production, but I do not think they were spoken to in
3 that agreement.

4 MR. MOSKOWITZ: Your recollection of that agreement, it
5 specifically referenced that judgment rather than pumping
6 limitation?

7 MR. REITER: Yes. I think it referenced that judgment
8 and then if somebody subsequently got another judgment
9 against San Bernardino, a third party, if you will, other
10 than Orange County at that point our district had to
11 provide water.

12 MR. MOSKOWITZ: You mentioned that the amount that the
13 City of San Bernardino is planning to sell to another
14 private entity is the same number as the amount we are
15 supplying under our contract with you; you mentioned that?

16 MR. REITER: If I said that, I misspoke. What I was
17 trying to say, the quantity in excess of the 16,000 was what
18 they were planning to sell.

19 MR. MOSKOWITZ: It is not as though they are going to
20 take water away from you and ship it somewhere else?

21 MR. REITER: I did not mean to put that in the record,
22 if that is the way it came across.

23 MR. MOSKOWITZ: You didn't say that. Just wanted to
24 make sure there was no confusion in the mind of the
25 listener. That is all.

1 H.O. BAGGET: East Valley.

2 MR. KENNEDY: Yes, briefly.

3 ---oOo---

4 CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF
5 SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT &
6 WESTERN MUTUAL WATER DISTRICT
7 BY EAST VALLEY WATER DISTRICT
8 BY MR. KENNEDY

9 MR. KENNEDY: Just a couple of questions for Mr.
10 Reiter.

11 Mr. Reiter, you indicated in your rebuttal testimony
12 that you wanted to present some argument regarding the legal
13 framework behind the Santa Ana River, the rights in the
14 Santa Ana River was part of what your rebuttal testimony was
15 regarding?

16 MR. REITER: My point was with regard to the Orange
17 County Settlement and the opportunities it provided for
18 areas upstream to conserve water.

19 MR. KENNEDY: Have you discussed the senior water right
20 holders in the Santa Ana River, specifically Paragraphs 4, 5
21 and 6?

22 MR. REITER: Just in the context of the fact that if
23 their needs were met, that water downstream from there
24 should be available.

25 MR. KENNEDY: Okay. Under Section 9 of the application

1 that has been filed by Muni, that provision states that the
2 permit which is sought by this application would be junior
3 as a matter of law to such pre-1914 appropriate rights of
4 Edison and mutual water companies that are listed. One of
5 the mutual water companies that is listed is North Fork
6 Water Company. Is that your recollection?

7 MR. REITER: I believe so, yes.

8 MR. KENNEDY: Does that continue to be the position of
9 Muni at this time?

10 MR. REITER: Yes.

11 MR. KENNEDY: Does that -- will that be the position of
12 Muni if this petition is granted and there will be a further
13 hearing on the application?

14 MR. O'BRIEN: Can we have a clarification when he talks
15 about the pre-1914 rights, I don't want to get into a
16 situation where we are talking about Mr. Cavender's version
17 where it is basically unlimited rights. If we can have some
18 definition of quantities we are talking about I think it
19 would be a more relevant question.

20 MR. KENNEDY: I am simply asking Mr. Reiter if the
21 position of Muni, as stated in its application, continues to
22 be the same today and will continue to be the same if the
23 petition is granted and we have further hearing on the
24 application.

25 I am not asking Mr. Reiter any statements as to the

1 actual numbers, but rather just whether or not the position
2 of Muni remains the same.

3 MR. REITER: I believe that the agreement that you
4 submitted yesterday, alluded to yesterday, between our two
5 districts, anticipate we execute in the near future speaks
6 to that issue. I believe the answer is yes.

7 MR. KENNEDY: Muni is a signatory to the exchange
8 plain; is that correct?

9 MR. REITER: That's correct.

10 MR. KENNEDY: And the water rights of North Fork Water
11 Company was included as part of exchange plain; is that
12 correct?

13 MR. REITER: Lumped together with Bear Valley and
14 Lugonia, yes.

15 MR. KENNEDY: And it is your understanding that the
16 terms of the exchange plan there is a provision that
17 provides that no party in the exchange plan will lose the
18 water rights that are recognized in the exchange plan by
19 reason of nonuse?

20 MR. O'BRIEN: Mr. Bagget, excuse me. I think we are
21 going beyond the scope of the rebuttal testimony that was
22 presented. I think if he wanted to get into issues about
23 the exchange plan or other issues that the proper time to do
24 that was yesterday. This ought to be limited to the
25 rebuttal testimony.

1 H.O. BAGGET: I would concur.

2 MR. KENNEDY: If I may, Mr. Reiter's rebuttal testimony
3 dealt with the legal framework under which the senior water
4 rights holders exercise their pre-1914 water rights. That
5 is specifically referenced in Sections 4, 5 and 6 of his
6 testimony. And, in fact, he indicates that those rights or
7 the water that could be captured as result of this
8 application if the petition is granted would be in excess of
9 the historical diversion requirements of the senior water
10 right holders.

11 I am simply following up on that portion of Mr.
12 Reiter's rebuttal testimony.

13 MR. O'BRIEN: I withdraw my objection. I don't want to
14 be an obstructionist. I think we can focus in on rebuttal
15 testimony. This can be moved along.

16 MEMBER FORSTER: I have a question. Are you just
17 confirming Number 5, what he said? Why don't you just read
18 that and ask him?

19 MR. KENNEDY: No, that is not my intent. My question
20 is whether or not it is the position of Muni that the
21 provisions of the exchange plain that provide that water
22 rights of the senior water right holders have not been lost
23 by nonuse continues to be something that Muni continues to
24 enforce through this proceeding.

25 So you may answer that question.

1 MR. O'BRIEN: I would like to have a definition of
2 "senior water right holders" that he is talking about.

3 MR. KENNEDY: Since your rebuttal testimony refers to
4 senior water right claimants, perhaps you can define how you
5 used that term in your rebuttal testimony.

6 MR. REITER: We were talking about the historic demands
7 of North Fork, Bear Valley, Lugonia, Redlands water and the
8 Edwards Line as part of the Bear Valley North Fork
9 system. I think that the agreement that was stipulated into
10 evidence this morning speaks for itself as far as my
11 district's Board's position with regard to existing rights.

12 MR. KENNEDY: So, the entities that you just named,
13 those would qualify as senior water right claimants as you
14 used the term in your rebuttal testimony?

15 MR. REITER: People upstream of that Greenspot Bridge.

16 MR. KENNEDY: That would include North Fork Water
17 Company?

18 MR. REITER: That's correct.

19 MR. KENNEDY: As I asked and I think as you answered,
20 North Fork Water Company is a party to the exchange plan?

21 MR. REITER: Yes.

22 MR. KENNEDY: And Muni is a party to the exchange plan?

23 MR. REITER: Yes.

24 MR. KENNEDY: And Section 14A of the exchange plan
25 provides that no party under that agreement will lose any

1 right by nonuse; is that correct?

2 MR. O'BRIEN: You know, I am going to object on
3 relevance, beyond the scope of rebuttal testimony.
4 Yesterday you had a tight rein on relevance issues. I
5 am going to impose --

6 H.O. BAGGET: I would sustain the objection.
7 Get to where you're going.

8 MR. KENNEDY: I have no further questions.

9 H.O. BAGGET: Thank you.
10 Inland Empire.

11 MR. CIHIGOYENETCHE: No questions.

12 H.O. BAGGET: Big Bear.

13 MR. EVENSON: No questions.

14 H.O. BAGGET: Chino Basin Local Sponsors.
15 MR. DONLAN: No questions.
16 H.O. BAGGET: And City of Ontario.

17 MR. GARNER: No questions.

18 H.O. BAGGET: Thank you.

19 MR. O'BRIEN: We would just offer into evidence
20 Exhibits 8 through 13, Muni/Western 8 through 13.

21 H.O. BAGGET: If no objections, they are entered into
22 evidence.
23 Thank you.
24 Orange County.

25 MR. MCNEVIN: Thank you.

1 H.O. BAGGET: While waiting for rebuttal, how many
2 other rebuttals?

3 Two other parties.

4 Do you have a rough estimate on what your time is going
5 to be?

6 MR. COSGROVE: I would say about 20 minutes.

7 MR. CIHIGOYENETCHE: About 15 minutes.

8 H.O. BAGGET: I guess the debate, we will see how this
9 one goes. If we can extend this one straight through to
10 1:00 and be done, that would certainly be my preference. We
11 will see. I imagine a few other people in the audience
12 also.

13 MR. MCNEVIN: We are ready to proceed, your Honor.

14 H.O. BAGGET: I have a robe, but I didn't wear one up
15 here.

16 ---oOo---

17 REBUTTAL TESTIMONY OF

18 ORANGE COUNTY WATER DISTRICT

19 BY MR. MCNEVIN

20 MR. MCNEVIN: Mr. Mills, yesterday Mr. Moskowitz
21 indicated that OCWD's Exhibit 16 did not represent increased
22 storm flow as a result of urbanization upstream, but merely
23 represented a contrast between a wet period and a dry
24 period.

25 Have you had an opportunity to study this issue

1 further?

2 MR. MILLS: Yes, I have.

3 MR. MCNEVIN: Have you drawn any conclusions as to
4 that?

5 MR. MILLS: Yes, I have. I would like to begin by
6 refreshing my memory as to the contents of this particular
7 graphic. The graphic illustrates the runoff storm flow at
8 Prado Dam beginning the period 1963-64 to 1997-98 in terms
9 of the runoff divided by the number of inches of rainfall.
10 And as can be seen, we show an increasing trend.

11 Daring this period of time there was, of course, wet
12 periods and dry periods. Short dry period occurred during
13 the mid '70s and, of course, there was a substantial dry
14 period that occurred during last of '80s and early 1990s,
15 known as the six-year drought period.

16 MR. MCNEVIN: Would you identify that exhibit?

17 MR. MILLS: This is Exhibit 16 from yesterday's
18 testimony.

19 We would like to provide here a new exhibit, Exhibit
20 Number 38, where we took a look at simply the last portion
21 of that -- the more recent portion of that graphic beginning
22 in 1978-1979 to the present. And we have shown also a
23 computer-generated best fit curve here, and we see once
24 again there is an increasing trend in the runoff or per inch
25 of rainfall.

1 We do note, though, that there are five years in here
2 that are relatively wet, and we felt that may skew the
3 analysis. So we then prepared another exhibit, which we'd
4 like to call Exhibit 39, in which we have deleted those wet
5 years. And you can see that we still have a trend line, an
6 upper trend line. I want to be careful to note that we
7 changed the scale on this substantially here because we
8 don't need the high numbers. But you still see a trend line
9 here, slope of a trend line is less than it was on prior
10 charts because we moved those five wet years.

11 We offer this as still evidence that there is
12 increasing runoff at Prado, per inch of rainfall, due to the
13 increased urbanization and channelization of flows upstream
14 of Prado.

15 MR. MCNEVIN: Thank you.

16 Over the past 30 years could you describe the average
17 annual storm flow at Prado based on the Watermaster reports?

18 MR. MILLS: Yes. I've done a calculation of that, and
19 over this period of time there has been approximately 99,000
20 acre-feet of annual -- average annual runoff at Prado Dam
21 over the 30-year period from storm flow.

22 MR. MCNEVIN: The 12,000 acre-feet per year of storm
23 flow that Dr. Drury testified he may use to blend with his
24 recycled water would equal what percent of this average
25 annual storm flow over the past 30 years?

1 MR. MILLS: The 12,000 would be approximately
2 one-twelfth of the average annual amount or about 8 percent
3 of the runoff that has occurred historically.

4 MR. MCNEVIN: At the risk of creating further
5 confusion, let's go back to the rule of seven for a moment.
6 Does the rule of seven apply in the event that Inland Empire
7 Utilities Agency desires to capture and infiltrate storm
8 flows using the existing replenishment basins?

9 MR. MILLS: The rule of seven applies. I've had a
10 discussion with Don Evenson during the recess, and we both
11 agreed that our work during the conjunctive use projects
12 several years ago indicated to us that in order to develop
13 one acre-foot per year of annual firm yield, one needed to
14 have at least seven acre-feet of storage capacity in order
15 to do that.

16 Thus, this means that for 12,000 acre-feet of annual
17 yield one would need a surface reservoir of seven times that
18 value. And the surface reservoir should be located, have to
19 be located, on a drainage course. This would include a
20 reservoir somewhat similar to Prado Dam or similar to the
21 Seven Oaks Dam, having the water conservation pool entirely
22 dedicated, that capacity entirely dedicated to that
23 particular purpose. And I think that the recharge
24 facilities that are indicated there would be the location of
25 the water, where the water would be delivered to. So that

1 there is no connection between the recharge facilities and
2 the requirement for having this large volume of storage in
3 order to generate the 12,000 acre-feet of average annual
4 firm yield for that particular program.

5 MR. MCNEVIN: Thank you.

6 Last, I understand that you wish to correct a potential
7 misunderstanding in your testimony yesterday. Mr. Garner,
8 referring to the MOU which was OCWD Exhibit 8, quoted
9 language that said OCWD did not seek to obtain any right
10 against the parties to the stipulated judgment which was
11 inconsistent with the stipulated judgment.

12 And he then asked if OCWD was seeking any right at all
13 against the upstream entities.

14 Did you wish to amend your answer?

15 MR. MILLS: I would like to clarify that with this
16 statement. The intent of the MOU was to affirm the
17 stipulated judgment, and I stand behind that statement. The
18 MOU was drafted, in fact, by Mr. Garner's office. I think
19 by Mr. Jim Morris. And I do not wish to go beyond the MOU
20 at this particular time. If anyone wishes to amend the
21 MOU, we can discuss it. But I am not comfortable expressing
22 a legal opinion as to the affect of the application. So I
23 cannot agree with Mr. Garner's statement. Fortunately, I am
24 not a lawyer, and I leave MOU's to them.

25 MR. MCNEVIN: No more questions.

1 H.O. BAGGET: Mr. O'Brien.

2 MR. O'BRIEN: No questions.

3 MR. FRINK: Mr. Cosgrove.

4 MR. COSGROVE: No questions, thank you.

5 H.O. BAGGET: Mr. Moskowitz.

6 MR. MOSKOWITZ: Yes.

7 ----oOo----

8 CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF

9 ORANGE COUNTY WATER DISTRICT

10 BY THE CITY OF SAN BERNARDINO

11 BY MR. MOSKOWITZ

12 MR. MOSKOWITZ: I would like, Mr. Mills, turn to your
13 new Exhibit 39 with the deletions. First of all, I see your
14 upward sloping line.

15 Do you know what the actual numbers are at the
16 beginning and at end of that line?

17 MR. MILLS: I can try to read them from the graphic.
18 Do you mean where they intersect the Y axis?

19 MR. MOSKOWITZ: Yes. The first one looks to be about
20 31 and --

21 MR. MILLS: It looks to be 31. I would say 31,000 and
22 at the end of this period approximately 44,000.

23 MR. MOSKOWITZ: One of the interesting things I'm
24 noticing about this chart is that at any point along the
25 line there are six bars that extend above the line and there

1 are eight bars that extend below the line, which means that,
2 notwithstanding this upward trend which is, I gather, kind
3 of an average, isn't it?

4 MR. MILLS: It is a computer-generated best fit curve
5 line.

6 MR. MOSKOWITZ: At any point of the line it would --
7 maybe you have to explain a best fit curve line for a
8 nonmathematician.

9 What is that?

10 MR. MILLS: Like I said, I am not a lawyer, and I am
11 not a mathematician, either, but --

12 MR. MOSKOWITZ: Maybe we ought to strike your exhibit.

13 MR. MILLS: Thank you very much for that.

14 My understanding of this is best curve fit would be one
15 which would minimize the deviation between the line that you
16 see on this graph at any particular point on either side of
17 it. Sum of the squares, to be specific, I think. So the
18 object would be to minimize the sum of the squares and the
19 differences between those periods.

20 MR. MOSKOWITZ: That is, to use lay speak as best we
21 can understand it, both of us are not a mathematician, it is
22 kind of an average, isn't it? In other words, it is an
23 attempt to manipulate some data, to normalize it in some
24 way?

25 MR. MCNEVIN: Objection. There is no attempt to

1 manipulate data here.

2 MR. MOSKOWITZ: I wasn't speaking pejoratively. To
3 handle it --

4 H.O. BAGGET: Sustain the objection.

5 MR. MOSKOWITZ: To handle the data, if you prefer, to
6 normalize it in some way? In other words, to basically
7 combine data in a way that says something about it in the
8 aggregate, as we can understand that as well, what I mean by
9 aggregate?

10 MR. MILLS: I don't think I agree with that. Simply,
11 this is a process to determine whether or not there is a
12 trend in a set of data.

13 MR. MOSKOWITZ: Okay. That is probably the best we can
14 do with nonmathematicians. Let me ask you this: At any
15 point in which the bars intersect your slope line, there are
16 more bars under the line than over the line, isn't that
17 correct?

18 MR. MILLS: That is true in this case, but I've already
19 deleted five that were above the line.

20 MR. MOSKOWITZ: I didn't ask you how many you deleted.
21 I'm just saying is that, notwithstanding you have a slope
22 line, eight times the bar fails to achieve the predicted
23 slope line; isn't that correct? Isn't that what you tried
24 to say?

25 MR. MILLS: There are eight periods which fall below

1 the slope line.

2 MR. MOSKOWITZ: And only six in which they exceed it?

3 MR. MILLS: That's correct.

4 MR. MOSKOWITZ: What I am asking you is if more times
5 than not you can't make your slope line, why not? Do you
6 know? In other words, this slope line is predicting a
7 certain result, but more times than not you can't achieve
8 it. So, why not?

9 MR. MILLS: I don't think the idea here is to develop a
10 line here that has equal number of periods above it and
11 below it. That is not the mathematical process that we go
12 through when we develop a trend analysis.

13 MR. MOSKOWITZ: My question is much simpler than that.
14 These numbers are different. In other words, for any given
15 year -- let's take two specific years. Let's take a look at
16 1983 and 1984 and right next to it, 1984 and 1985. If we
17 look there, we see that 1983-1984 seems to have about more
18 than 5,000, around 5,000; and '84-85 is below 3,000. So we
19 have right there on your chart rather different results in
20 adjacent years, notwithstanding this unmistakable, given the
21 change in scale, not really important trend.

22 Why would these two numbers be different, is what I am
23 asking you. How come we can't get the same result in '84
24 and '85 as we just got to '83-84, given the unmistakable
25 trend?

1 MR. MILLS: I think I can answer that question for you.
2 It is not a mathematical issue. The runoff from any
3 watershed is dependent upon the intensity of the rainfall.
4 In other words, in some watersheds it may take six or eight
5 inches per year to have any runoff to occur. And after that
6 incipient or that threshold is reached, you generally get
7 some kind of a parabolic curve, which indicates that you
8 tend to get more runoff per inch of rainfall as you move
9 into the higher years.

10 MR. MOSKOWITZ: Exactly. So, what influence is how
11 much the soil will absorb before it starts running off is a
12 function of what is already in the soil, right?

13 MR. MILLS: A function -- partly a function of that.

14 MR. MOSKOWITZ: Water years don't start fresh every
15 year, do they, with the soil being absolutely dry all the
16 way to bedrock, right? It depends on also what happened the
17 previous year?

18 MR. MILLS: Not necessarily. Water years that we use
19 here begin on October 1st of each year. And in Southern
20 California we have very little rainfall in the summertime,
21 so we tend to start off each water year with the same
22 antecedant conditions.

23 MR. MOSKOWITZ: That wasn't what I was asking. Let's
24 say that we had a period of ten really wet years. It was
25 one of these rare things in Southern California, floods us

1 out ten years in a row. Comes year 11, wouldn't you think
2 that the runoff would start sooner per inch of rainfall than
3 if we hadn't had these ten really wet years?

4 MR. MCNEVIN: Objection. Incomplete hypothetical.

5 MR. MOSKOWITZ: I don't know how to make it any more
6 complete, but I will try again if you didn't understand. If
7 you do understand, I would like an answer.

8 MR. MILLS: Are you saying that we had ten --

9 MR. MOSKOWITZ: Let's say the groundwater is -- let's
10 stay -- let's try Bunker Hill Basin. I know something a
11 little bit about that. Half the time it is threatening to
12 be a lake. Let's say the groundwater is two foot below
13 ground surface as it sometimes is, unfortunately, and we
14 have then the new year's rainfall.

15 Wouldn't there tend to be runoff sooner than if the
16 groundwater was, say, 50 feet below ground surface?

17 MR. MILLS: I am not that familiar with the Bunker Hill
18 Basin, whether two feet of unsaturated system would be
19 filled very rapidly or not. I couldn't answer that
20 question.

21 MR. MOSKOWITZ: Forget the Bunker Hill Basin. It's not
22 important to the question. The question is: If soil is
23 saturated already from what it's already experienced in the
24 last season, and it didn't go anywhere and it is still
25 there, would you tend to get runoff sooner than if you were

1 just exiting from a big drought?

2 MR. MILLS: As I indicated, that is not a likely
3 situation in Southern California because we have dry summers
4 here.

5 MR. MOSKOWITZ: That is why people ask hypotheticals,
6 so you can just grasp the concept if you understand the
7 answer to that concept. In other words -- let me try this.

8

9 MR. MCNEVIN: Objection. I think we're getting into
10 argument here. And whatever point counsel wants to make he
11 can make in his closing argument without pursuing this line
12 any further.

13 MR. MOSKOWITZ: I think that this is a very important
14 point. If we are talking about an upward trend and the
15 point that I was making, and this is supposed to be
16 rebuttal, is that when you get runoff per inch of rain
17 depends on what you've already experienced. That is why
18 they deleted these dry years.

19 So what I was saying, and what I think it actually
20 proves, is that what kind of runoff you get in one year
21 depends on how wet the soil was from the previous year. In
22 a wet period you are going to get runoff pretty quick. What
23 I think this witness will eventually say, if he wants to, is
24 that that factor completely swamps the paving factor that we
25 are being offered here, that urbanization is the important

1 thing. The really important thing is are you in a wet year
2 or dry year.

3 H.O. BAGGET: I would sustain the objection. I think
4 you are getting into testimony, your argument that you are
5 going to be making in your closing briefs.

6 Do you have anything else that's --

7 MR. MOSKOWITZ: No. If this line of inquiry is cut
8 off, then I will, of course, make it in my argument.

9 Thank you.

10 H.O. BAGGET: East Valley.

11 Do we have Inland Empire?

12 MR. CIHIGOYENETCHE: Brief.

13 ----oOo----

14 CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF

15 ORANGE COUNTY WATER DISTRICT

16 BY INLAND EMPIRE UTILITIES AGENCY

17 BY MR. CIHIGOYENETCHE

18 MR. CIHIGOYENETCHE: Mr. Mills, in your review of
19 Exhibits 16, 38 and 39 you point to an increasing trend of
20 storm flow per inch of rainfall, correct?

21 MR. MILLS: That's correct.

22 MR. CIHIGOYENETCHE: In my logic of thinking is that
23 you're tying this increasing trend as a changed circumstance
24 to warrant the granting of the application of why we are
25 here today; is that correct?

1 MR. MILLS: That's correct.

2 MR. CIHIGOYENETCHE: Isn't it true, Mr. Mills, that
3 this increasing trend was indeed anticipated as early as
4 1969 when the stipulated judgment was entered into between
5 the parties?

6 MR. MCNEVIN: Objection. Whether or not it was
7 anticipated doesn't mean it occurred and what the testimony
8 has been is what has factually occurred over the past 30
9 years, not what was anticipated.

10 MR. CIHIGOYENETCHE: My question is just that. The
11 trends that you are displaying to the Board right now in
12 Exhibit 38 and 39 are precisely those trends that were
13 addressed by implementing the formula for calculation of
14 credits in the 1969 judgment, correct?

15 MR. MILLS: I don't agree with that.

16 MR. CIHIGOYENETCHE: You believe that these increasing
17 trends that you've pointed out are something completely new
18 and unique that were not taken into contemplation in the
19 original judgment?

20 MR. MCNEVIN: Objection. Mischaracterizes the
21 testimony.

22 H.O. BAGGET: Rephrase the question.

23 MR. CIHIGOYENETCHE: Is it your testimony, Mr. Mills,
24 that the increasing trends that you displayed here with
25 Exhibits 38 and 39 are increasing flows that were not

1 anticipated in the original judgment?

2 MR. MILLS: I have no knowledge that they were. I
3 might add, these are storm flows that are not subject to the
4 42,000 figure that was in the judgment.

5 MR. CIHIGOYENETCHE: The 12,000 acre-feet that you
6 testified to as being 8 percent of the historical runoff,
7 that 12,000 acre-feet is set forth in the testimony of Drury
8 is only that amount used to blend; is that correct?

9 MR. MCNEVIN: Excuse me, you mischaracterized Mr.
10 Mills' testimony. He didn't say it as historic runoff. He
11 said storm flow over the past 30 years.

12 MR. CIHIGOYENETCHE: With that in mind?

13 MR. MILLS: Yes.

14 MR. CIHIGOYENETCHE: Would you answer the question?

15 MR. MILLS: Would you repeat the question?

16 MR. CIHIGOYENETCHE: The question is that that 12,000
17 acre-foot reference is only to that amount utilized to
18 blend; is that correct? Is that your understanding?

19 MR. MILLS: That is my understanding. That is what
20 they would they -- and I think he said he could blend with
21 either state water or storm water.

22 MR. CIHIGOYENETCHE: Nothing further.

23 H.O. BAGGET: Thank you.

24 Big Bear.

25 MR. EVENSON: No questions.

1 H.O. BAGGET: Chino Basin Local Sponsors.

2 MR. DONLAN: No.

3 H.O. BAGGET: And City of Ontario.

4 MR. GARNER: I have to ask one or two, I am afraid.

5 H.O. BAGGET: That is why we are here.

6 ---oOo---

7 CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF

8 ORANGE COUNTY WATER DISTRICT

9 BY CITY OF ONTARIO

10 BY MR. GARNER

11 MR. GARNER: Mr. Mills, as you can imagine, I don't
12 think your clarification gave the upper area parties much
13 comfort, so I need to ask one or two questions here.

14 You're standing behind the terms of the MOU; is that
15 correct?

16 MR. MILLS: I've said that.

17 MR. GARNER: In your understanding in filing this
18 application is OCWD trying to obtain a right against the
19 upper area parties different than the rights outlined in the
20 1969 judgment?

21 MR. MCNEVIN: Objection, calls for a legal conclusion.

22 MR. GARNER: I asked for his opinion, and there is
23 testimony. In fact, in his testimony, Page 4, the first
24 paragraph, he has testimony regarding existing upstream
25 rights. In fact, there are numerous legal references in his

1 direct testimony. I think he is well qualified to answer in
2 his opinion, if that is the case.

3 MR. MCNEVIN: I don't think there are any legal
4 references. There are factual references from stipulated
5 judgment.

6 MR. GARNER: We can go through it, but I believe there
7 are legal references.

8 H.O. BAGGET: I would overrule the objection.

9 What is your understanding?

10 MR. MCNEVIN: Can we have the question read back?

11 MR. GARNER: In filing its application, in your
12 understanding -- in your understanding, Mr. Mills, in filing
13 its application is OCWD trying to obtain a right different
14 than the rights given to it in the 1969 judgment against the
15 upstream or upper area parties?

16 MR. MILLS: We are not attempting to acquire a right.
17 We are simply trying to stand behind the MOU and what is in
18 the stipulated judgment.

19 MR. GARNER: So you are not trying -- in your
20 understanding you are not trying to acquire any additional
21 right against upper area parties?

22 MR. MCNEVIN: Same objection. To the extent that this
23 witness' understanding of what rights may be inherent in the
24 stipulated judgment versus what rights are inherent in its
25 application has any relevance, he can provide that limited

1 testimony.

2 MR. GARNER: In your understanding, Mr. Mills, is OCWD
3 trying to use the petition/application process to prevent
4 export of water from the Santa Ana River watershed?

5 MR. MCNEVIN: Objection. Irrelevant.

6 MR. GARNER: That is my final question. I think it is
7 relevant.

8 H.O. BAGGET: I would sustain the objection.

9 MR. GARNER: All right. No further questions.

10 ----oOo---

11 CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF

12 ORANGE COUNTY WATER DISTRICT

13 BY STAFF

14 MR. FRINK: I did have a clarification.

15 Mr. Mills, I believe there was a reference made, and
16 maybe it mistakenly, but in one of the questions you were
17 asked someone referred to the years that were deleted from
18 Exhibit 39 as being the dry years. In fact, are the years
19 that were deleted the relatively wetter years?

20 MR. MILLS: That is absolutely true. That was a
21 misstatement by counsel.

22 MR. FRINK: That you. That is all.

23 MR. MCNEVIN: If there are no further questions, I move
24 the admissions of the Exhibits 38 and 39.

25 H.O. BAGGET: If there are no objections, they are

1 admitted in evidence for the record.

2 MR. MCNEVIN: Thank you.

3 H.O. BAGGET: Two more. Let's go for it.

4 MR. COSGROVE: My preference would be to break for
5 lunch.

6 H.O. BAGGET: Let's take a show of hands.

7 MR. COSGROVE: We'll go.

8 H.O. BAGGET: Let's do it. Maybe we can take -- I
9 would like three minutes. I have to make one quick phone
10 call.

11 Let's take till 12:00, five minutes, seven minutes.

12 (Break taken.)

13 H.O. BAGGET: Let's get going here.

14 Mr. Cosgrove, you can proceed.

15 MR. COSGROVE: Thank you. We are going to call on
16 rebuttal Mr. Headrick.

17 ---oOo---

18 REBUTTAL TESTIMONY OF

19 SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

20 BY MR. COSGROVE

21 MR. COSGROVE: Mr. Headrick, you reviewed the analysis
22 done by Mr. Beeby, correct?

23 MR. HEADRICK: Yes.

24 MR. COSGROVE: And you're familiar with the use he
25 makes of the time between 1971-72 and 1990-91 as the base

1 period?

2 MR. HEADRICK: Yes, I am.

3 MR. COSGROVE: And how he uses that period to reach a
4 cumulative conclusion regarding water available in the Santa
5 Ana River near Mentone?

6 MR. HEADRICK: Yes.

7 MR. COSGROVE: Do you believe that the base period he's
8 identified provides an accurate basis for concluding what
9 unappropriated water might be presently available at that
10 location?

11 MR. HEADRICK: No, I do not.

12 MR. COSGROVE: Do you agree with his conclusion that
13 the base period was a conservative indicator of available
14 river flows?

15 MR. HEADRICK: No, I do not.

16 MR. COSGROVE: Now, in our testimony this morning he
17 had anticipated a little bit of what we've done. Have you
18 done an analysis similar to that which was presented by Mr.
19 Beeby this morning with respect to the characterization of
20 that base period as a conservative or dry period with
21 respect to the two gauges from which the amounts of water in
22 there were calculated as cumulatively available was done?

23 MR. HEADRICK: Yes.

24 MR. COSGROVE: What don't you tell us about that
25 analysis.

1 MR. HEADRICK: I am sure everybody's tired of these
2 squiggly lines.

3 MEMBER FORSTER: They are wonderful.

4 MR. HEADRICK: All this is is a combination of the two
5 charts that was presented before with some additional notes
6 made on them. The top or the red line was the original
7 submittal by the petitioner, which is for the river and the
8 flume. The blue line is the river only.

9 MR. COSGROVE: We will call this Conservation District
10 21.

11 MR. HEADRICK: As has been previously explained how you
12 use these charts to determine wet, relatively wet or dry
13 periods, what this chart shows in one place is the downward
14 trend of the accumulated departure from mean for the entire
15 gauge system of the river only and the flume, and just the
16 opposite conclusion can be made by looking at the river
17 only.

18 MR. COSGROVE: What does the analysis tell you about
19 Mr. Beeby's use of base period as an indicator of present or
20 prospectively available flows?

21 MR. HEADRICK: It obviously, using the methodology
22 presented in the original testimony, it would overstate the
23 amount of water available. Some estimates on how much that
24 overstatement might be are shown down in the lower left-hand
25 corner.

1 What that slows is how much additional water during
2 that 20-year period above the average or the change in the
3 accumulated departure in mean from the beginning of the
4 period to the end of the period was. You can see before in
5 the original testimony we use all gauges. It shows a dry
6 period by 46,000 acre-feet. But if you use just the river
7 only, actually shows a wet period of 58,000 acre-feet.
8 Combined difference there is over 100,000 acre-feet.

9 MR. COSGROVE: Mr. Beeby in his testimony that he
10 presented today appears to take the 8 percent by which the
11 base period exceeds average flows at those two gauges and
12 then makes an adjustment to the cumulative amount of water
13 available.

14 Do you believe that that is a valid calculation?

15 MR. HEADRICK: It is not.

16 MR. COSGROVE: Why not?

17 MR. HEADRICK: Using the same criticism about using
18 averages for this flow is apparent in the use of the 8
19 percent. If you remember during the rebuttal testimony,
20 they took 8 percent off the top of the total available water
21 that was there, which I believe dropped it 21,000 acre-feet
22 over the 20 period by just using this average. But because
23 we have variable hydrology we really can't do that.

24 What we see is when we look at the accumulated parts
25 per mean curves, that it really changed, closer to 60,000

1 acre-feet.

2 MR. COSGROVE: Are you also familiar with the
3 presumption that Mr. Beeby made with respect to where Bear
4 Valley takes its water?

5 MR. HEADRICK: Yes.

6 MR. COSGROVE: And the presumption that Bear Valley is
7 a senior right holder would take its water downstream --
8 would not take its water downstream of the dam?

9 MR. HEADRICK: Yes.

10 MR. COSGROVE: Was this presumption accurate -- first
11 off, is there data available to test the validity of this
12 presumption?

13 MR. HEADRICK: Yes, there is. It's the auxiliary
14 gauge, 11051502.

15 MR. COSGROVE: Have you looked at that data?

16 MR. HEADRICK: Yes, I have.

17 MR. COSGROVE: Have you assessed whether Mr. Beeby's
18 presumption with respect to the fact that Bear Valley uses
19 infrequent or not at all during the base period, have you
20 used that data to assess the validity of that presumption?

21 MR. HEADRICK: Yes.

22 MR. COSGROVE: Was it valid during the base period that
23 he defined?

24 MR. HEADRICK: Yes, it was.

25 MR. COSGROVE: Is it valid data?

1 MR. HEADRICK: I do not believe so.

2 MR. COSGROVE: Have you done any kind of compilation of
3 data from Bear Valley's diversion from this pickup area?

4 MR. HEADRICK: Yes.

5 MR. COSGROVE: I would like to mark and offer, mark in
6 any event, and ask that we put on Conservation District's
7 Number 22, a chart entitled, "Annual Diversion BVMWCM River
8 Pickup."

9 You see that chart, Mr. Headrick?

10 MR. HEADRICK: Yes.

11 MR. COSGROVE: Did you prepare that chart?

12 MR. HEADRICK: Yes, I did.

13 MR. COSGROVE: Could you tell us what that is?

14 MR. HEADRICK: This shows annual flows that have been
15 taken in by Bear Valley Mutual Company into their diversion
16 downstream of the dam.

17 MR. COSGROVE: There was some testimony this morning
18 that Bear Valley had reconstructed its facilities on the
19 Bear Valley pickup or auxiliary diversion; is that correct?

20 MR. HEADRICK: That is correct.

21 MR. COSGROVE: Are you familiar with the reconstruction
22 facilities?

23 MR. HEADRICK: Yes, I am.

24 MR. COSGROVE: Do you know what capacity those
25 facilities have for diversion downstream of the dam?

1 MR. HEADRICK: Yes, I am.

2 MR. COSGROVE: What is it?

3 MR. HEADRICK: The pinch point in that diversion system
4 is the USGS gauge, a section itself; and it is designed for
5 45 cfs, 45 to 50 cfs.

6 MR. COSGROVE: The increasing diversions that are shown
7 here on the chart shown from Bear Valley, do you have any
8 reason to believe that Bear Valley will continue its more
9 recent use of this diversion downstream of the Seven Oaks
10 Dam in taking its water?

11 MR. HEADRICK: Yes. Since I work with their field
12 personnel on a weekly basis, they have told me they plan to
13 continue to use this diversion to meet their needs.

14 MR. COSGROVE: What impact does Bear Valley Mutual
15 Water Company's use of the river pickup have on available
16 flows from the river only gauges as projected from Mr.
17 Beeby's base period?

18 MR. HEADRICK: The analysis done by Mr. Beeby, again,
19 tends to overstate the available water because this
20 diversion was not taken into account.

21 MR. COSGROVE: Do you remember in cross-examination
22 yesterday Mr. O'Brien asked you if you'd done an analysis of
23 the probability of the average flows, the monthly average
24 flows, that you testified to on direct being exceeded?

25 MR. HEADRICK: Yes.

1 MR. COSGROVE: You indicated that you had done that
2 analysis?

3 MR. HEADRICK: That's correct.

4 MR. COSGROVE: Did you do that with respect to the
5 seasonal availability of flows in this area near Mentone?

6 MR. HEADRICK: Yes.

7 MR. COSGROVE: Did you do that with reference to on a
8 monthly basis?

9 MR. HEADRICK: That's correct.

10 MR. COSGROVE: Can you describe for us what analysis
11 you undertook in that regard?

12 MR. HEADRICK: Again, took the monthly average flow for
13 the 87 years of record that we have and summarized them or
14 put them in a column and sorted them from lowest to highest,
15 and assigned each one of those a value of probability that a
16 flow would be equal or exceeded.

17 MR. COSGROVE: Have you compiled the results of that
18 analysis in any graphic form?

19 MR. HEADRICK: Yes.

20 MR. COSGROVE: I would like to offer and show Exhibit
21 CD 23, a chart entitled "Summary of Probability of Monthly
22 Average Flows cfs Being Exceeded."

23 Can you tell me what this chart reflects?

24 MR. HEADRICK: Again, this is just a summary of the
25 analysis I just described wherein I took some reference or

1 benchmark flows, ranging from 5 to 500 cfs, and chose the
2 probabilities that those reference or benchmark flows would
3 be equaled or exceeded.

4 For example, at the 500 cfs level you can see the
5 chance that an average flow during that time was equaled or
6 exceeded between April and November is zero.

7 MR. COSGROVE: The percentages that are shown here on
8 this chart, are these after diversions by the Conservation
9 District or Bear Valley?

10 MR. HEADRICK: No. This is before. This is the raw
11 river.

12 MR. COSGROVE: What conclusions do you draw from this
13 analysis regarding the seasonal availability of flows and
14 the exceedance of monthly averages?

15 MR. HEADRICK: Again, it looks to be typical of what a
16 Southern California river would look like dominated by a
17 natural stream system. It shows a very dry period in the
18 summer and fall time. And a wetter period during the
19 spring.

20 MR. COSGROVE: Now, there has been some criticism here
21 on your use of monthly averages and, indeed, on the use of
22 any types of averages for analysis of flows on a variable
23 stream.

24 Have you done any analysis of the seasonable
25 availability of flows near Mentone that doesn't use

1 averages?

2 MR. HEADRICK: Yes, I have.

3 MR. COSGROVE: What analysis did you undertake in that
4 regard?

5 MR. HEADRICK: I actually performed the same type of
6 analysis, but instead of doing any averaging I took the raw
7 USGS daily data and performed the same type of exceedance
8 analysis where you take the roughly 2500 days in January
9 that have occurred the last 87 years, and you sort those
10 from highest to lowest and assign probabilities to each one
11 of those.

12 MR. COSGROVE: And did you compile the results of that
13 analysis in any kind of graphic form?

14 MR. HEADRICK: Yes.

15 MR. COSGROVE: What did you do?

16 MR. HEADRICK: I've actually put together 12 charts,
17 one for each month, that showed the probability of
18 exceeding. We'll put up just a couple representative. A
19 wet period, let's pick March or October.

20 MR. COSGROVE: What I would like to do is collectively
21 mark the months' charts for the probability of daily flow
22 being equaled or exceeded as Conservation District's 24,
23 consisting of 12 charts, January through December.

24 MR. HEADRICK: What we see, looking at this March, is
25 what we consider our wet period where the chance that any

1 day in the last 87 years was above the daily flow, was above
2 200, is in the 10-percent range. If we overlay on top of
3 that the October, which we consider one of the drier months.

4 MR. COSGROVE: Let's hold off a minute. I can see that
5 I've caused some consternation. I am going to mark these
6 individually, 24 through -- I am sorry.

7 MS. MROWKA: You have to pick a plan.

8 MR. CAVENDER: 24 through 35.

9 MR. COSGROVE: 24 through 35.

10 Go ahead, Mr. Headrick.

11 MR. HEADRICK: What you see when you overlay this dry
12 and a wet period is the difference between the probability
13 that flows will exist in a wet month and a dry month. We
14 see that in October the opportunity for -- the probability
15 that a flow would exceed 200 cfs during October, based on
16 data from the last 87 years, is zero.

17 MR. COSGROVE: Have you taken the data and results from
18 this analysis and compiled it in a chart form similar that
19 you did for that analysis of the monthly average flows being
20 exceeded?

21 MR. HEADRICK: Yes, I have.

22 MR. COSGROVE: Could you show that to us, please.

23 MR. HEADRICK: Again, using the same layout as before,
24 but this has no averaging other than averaging used by the
25 USGS to come up with our actual discrete points of daily

1 flow.

2 Again, we see a very dry period. And if we were to
3 overlay the graph from the monthly chart to the daily chart,
4 you would see that the results are quite similar. Again, we
5 have a roughly eight-month period where the flows, the
6 probability of the flows exceeding 500 cfs. Again, that was
7 the point that I identified yesterday as the regulatory
8 point or regulating effect point for the dam.

9 The chance that those flows would ever be reached
10 during the period April through December is less than 1
11 percent.

12 MR. COSGROVE: What do you conclude on the basis of the
13 analysis that you have done, both with the exceedance
14 analysis for monthly flows and the exceedance analysis with
15 respect to doing no averages, but just looking at the raw
16 data with respect to the season of availability that you
17 testified to on direct?

18 MR. HEADRICK: I believe it supports the conclusions
19 that we made before. And based on Mr. Beeby's assumption
20 that the dam will regulate flows above 500 cfs, it appears
21 that the 500 cfs row or the bottom row that is shown on the
22 two charts is an appropriate basis for determining the new
23 water or the probability that new water will be created by
24 regulatory effects of the dam.

25 I believe that these two charts that we have prepared

1 are tools that the State Board can use to determine the
2 answer to one of the key issues, and that is is there
3 adequate water available and, if there is, during what
4 periods does it exist.

5 MR. COSGROVE: We don't have any further questions at
6 this time.

7 MR. FRINK: Just so the record is clear, the last chart
8 that you referred to is Summary of Probability of Daily
9 Flows Being Exceeded, Water Years 1912 to 1998, would be
10 Exhibit 36.

11 MS. MROWKA: No, 38 -- no, 36; you are right.

12 H.O. BAGGET: Mr. O'Brien.

13 MR. O'BRIEN: Thank you.

14 ---oOo---

15 CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF
16 SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
17 BY SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT &
18 WESTERN MUTUAL WATER DISTRICT
19 BY MR. O'BRIEN

20 MR. O'BRIEN: Mr. Headrick, you have reiterated your
21 concerns about Mr. Beeby's base period and provided us with
22 this analysis reflected in Exhibit 21.

23 As I understand it, your analysis is based essentially
24 on data from different gauges than that used by Mr. Beeby;
25 is that correct?

1 MR. HEADRICK: That is not correct.

2 MR. O'BRIEN: Mr. Beeby in the analysis that he
3 performed to come up with his numbers for the base period
4 used, I believe, the combined gauge, Number 11051 and 501;
5 is that correct?

6 MR. HEADRICK: That's correct.

7 MR. O'BRIEN: Your analysis you used the river only
8 gauge, which is Number 11051500?

9 MR. HEADRICK: That's correct.

10 MR. O'BRIEN: So you did use different gauges?

11 MR. HEADRICK: I used the same gauges.

12 MR. O'BRIEN: Just different data?

13 MR. HEADRICK: I just combined two of them instead of
14 three.

15 MR. O'BRIEN: Fair enough.

16 Now, leaving aside the question of whether the data Mr.
17 Beeby used was the right set of data or the set of data you
18 used was the right set of data, and I understand you
19 disagree with the data set he used, but what I want to get
20 to is in performing his analysis of that data, the
21 mathematical computations that he did, do you have any
22 problems with the way he computed his numbers?

23 MR. HEADRICK: Are you speaking just about his
24 accumulated departure from mean that he presented in his
25 original testimony?

1 MR. O'BRIEN: Correct.

2 MR. HEADRICK: No. I believe that is represented on
3 our chart; it is the same. We are using the same data set.

4 MR. O'BRIEN: Okay.

5 So, is it fair to say, based on what you just told me,
6 that if you were to use Mr. Beeby's gauge data, as opposed
7 to the gauge data you used, you would expect to come to the
8 same conclusions that he came to with respect to the
9 question of water available at that location?

10 MR. HEADRICK: If I were to use his methodology and --

11 MR. COSGROVE: I am going to object. I think that
12 mischaracterizes his testimony.

13 MR. O'BRIEN: Do you understand my question, Mr.
14 Headrick?

15 MR. HEADRICK: I understand your question. If I were
16 to do the exact same analysis that he did, would I come to
17 the same conclusions? The answer is yes.

18 MR. O'BRIEN: Mathematically.

19 Thank you.

20 Now, getting back to your analysis, you concluded that
21 the base period that Mr. Beeby utilized is, in your words,
22 wetter than normal, correct?

23 MR. HEADRICK: That's correct.

24 MR. O'BRIEN: I believe you testified in your rebuttal
25 testimony that you think that the impact of his use of his

1 base period versus a more normal base period is in the range
2 of about 60,000 acre-feet; is that correct?

3 MR. HEADRICK: Yes.

4 MR. O'BRIEN: Mr. Beeby had testified in his direct
5 testimony that he thought, based on his analysis, that there
6 was between 261,000 and 278,000 acre-feet of water
7 potentially available for appropriation based on his
8 analysis; do you recall that?

9 MR. HEADRICK: Yes.

10 MR. O'BRIEN: You are saying that, in fact, in order to
11 be conservative he ought to take 60,000 acre-feet off those
12 numbers?

13 MR. HEADRICK: That would not be conservative; that
14 would get it back to normal. To be conservative you could
15 potentially decrease it by the number that he was making use
16 of before, to determine what was conservative and what
17 wasn't conservative, the minus 46,000. So, if you actually
18 want to be conservative you wouldn't put it back to neutral
19 or normal hydrology, you would actually want to make it a
20 little drier. So that change --

21 MR. O'BRIEN: If you were going to be conservative
22 based on the curve that you prepared in estimating the
23 amount of water that is available at that location what
24 number would you subtract from his number of 261,000
25 acre-feet?

1 MR. COSGROVE: I'll object. That is vague as to time.
2 Available when?

3 MR. HEADRICK: I haven't had any chance to analyze
4 that. I would have to actually sit down and go through the
5 numbers to determine what I would consider to be
6 conservative.

7 MR. O'BRIEN: I am trying to figure out how that 60,000
8 acre-foot number fits into this. You have given us that
9 number. I would like you to explain what that number
10 represents.

11 MR. HEADRICK: That number represents the difference
12 between the accumulated departure from mean at the beginning
13 of the chosen base period and accumulated departure from the
14 mean at the end of the base period. So it is increased by
15 that much mean. On average that much more water went by
16 through that period.

17 MR. O'BRIEN: That represents the increment by which
18 you believe Mr. Beeby's analysis may be, shall I say, less
19 conservative. Is that fair?

20 MR. HEADRICK: That is part of it, yes.

21 MR. O'BRIEN: Would you disagree, though, based on the
22 analysis that you have done that there is surplus water that
23 passes the river at that point at Mentone, regardless --
24 let's not talk about what the number, let's talk about the
25 gross terms. Is there surplus water?

1 MR. COSGROVE: Again, vague as to time.

2 H.O. BAGGET: Over what time period?

3 MR. O'BRIEN: The time periods reflected in your
4 exhibit.

5 MR. HEADRICK: I believe my analysis shows that during
6 certain periods of the year, January through April, January
7 through May, there are significant flows.

8 MR. O'BRIEN: Those flows would be available for
9 diversion at Seven Oaks Dam, assuming that the State Board
10 grants the necessary permits?

11 MR. COSGROVE: I think that calls for a legal
12 conclusion. Object to it on that basis.

13 H.O. BAGGET: Sustained.

14 MR. O'BRIEN: Those quantities would be physically
15 capable of diversion in the vicinity of Seven Oaks Dam,
16 right?

17 MR. HEADRICK: That is not known yet. Physically
18 meaning the facilities exist to perform that function?

19 MR. O'BRIEN: Let's assume the facilities exist. The
20 question is, is the water there?

21 MR. HEADRICK: Yes, I believe analysis shows that.

22 MR. O'BRIEN: Thank you.

23 On the Bear Valley Mutual diversions, which is your
24 Exhibit Number 22, these increases in Bear Valley Mutual
25 diversions that occurred, let's say, beginning in 1995, do

1 you know what precipitated that change?

2 MR. HEADRICK: I believe construction of the dam.

3 MR. O'BRIEN: And is it fair to say that the increases
4 in diversions starting in 1995 occurred outside the base
5 period which Mr. Beeby used for his analysis?

6 MR. HEADRICK: Yes.

7 MR. O'BRIEN: So this -- these increases in the
8 diversions occurring in 1995 would not effect the validity
9 of Mr. Beeby's analysis?

10 MR. HEADRICK: That is not correct.

11 MR. O'BRIEN: Are you aware of any net increase in the
12 diversions of water by Bear Valley Mutual during the past
13 ten years?

14 MR. HEADRICK: I am not.

15 MR. O'BRIEN: So this is a situation where they're
16 taking the same amount of water but they are doing it at a
17 different location?

18 MR. HEADRICK: I don't know if they are taking the same
19 amount of water.

20 MR. O'BRIEN: You have no knowledge of that?

21 MR. HEADRICK: I do not have that information with me.

22 MR. O'BRIEN: If Bear Valley Mutual were to in the
23 future divert more water at a point farther downstream, as
24 you've suggested, would that make diversion capacity in the
25 Southern California Edison facilities available for other

1 parties to use at an elevation higher?

2 MR. COSGROVE: I think that calls for a legal
3 conclusion, as well.

4 MR. O'BRIEN: Physically?

5 MR. HEADRICK: Repeat that question.

6 MR. O'BRIEN: If Bear Valley Mutual were to do what you
7 are suggesting and move some of its diversions farther
8 downstream, would that free up physical capacity in the
9 Southern California Edison system for use by other parties
10 at a higher elevation?

11 MR. HEADRICK: I don't believe so. The Edison system
12 is run by Edison. They put as much water into it as they
13 can, based on the flows, as I understand it. Would not free
14 anything up.

15 MR. O'BRIEN: So, the fact of Bear Valley Mutual taking
16 more water at a different location wouldn't make any
17 diversion capacity available at the higher point?

18 MR. HEADRICK: No.

19 MR. O'BRIEN: Taking a look at your Exhibit 23, I
20 believe, the summary of probability of monthly average flows
21 being exceeded, you testified in your previous testimony, I
22 believe, that based on your analysis of averages that there
23 was no water available for diversions in a period May
24 through December. Is that a fair summary?

25 MR. HEADRICK: With the averages I used, yes.

1 MR. O'BRIEN: I am glad you added that qualifier.

2 Is it fair to say that in some years there will be
3 significant amount of water available during the years of
4 May through December in some wet years?

5 MR. HEADRICK: Over and above the historic diversions?

6 MR. O'BRIEN: Yes.

7 MR. HEADRICK: I don't believe so. When you say
8 significant, I don't know what that means. Obviously, the
9 water is not in the river in significant levels.

10 MR. O'BRIEN: Your previous testimony was that there is
11 no water May through December, taking into account the
12 diversion requirements of the senior water right claimants
13 and only taking into account the Conservation District's
14 licensed water rights. Is that a fair summary?

15 MR. HEADRICK: Yes. On a monthly average basis that is
16 correct.

17 MR. O'BRIEN: Yes. Thank you for continuing to remind
18 my about that.

19 The record of diversions by the Conservation District,
20 which we looked at yesterday, shows significant quantities
21 of water being diverted May through December period for
22 some years by the Conservation District, correct?

23 MR. HEADRICK: That's correct.

24 MR. O'BRIEN: All of that water is being diverted
25 under your claim of pre-1914 right?

1 MR. COSGROVE: I will object that it calls for a legal
2 conclusion.

3 MR. O'BRIEN: It is outside the season of your
4 licenses, and it is either an illegal diversion or pre-1914
5 rights.

6 MR. COSGROVE: The recharacterization doesn't change
7 the fact that he is asking for a legal conclusion.

8 H.O. BAGGET: I will sustain the objection.

9 MR. O'BRIEN: To your knowledge, are those diversions
10 within the season of diversion under your licenses?

11 MR. HEADRICK: Which ones?

12 MR. O'BRIEN: The May through December diversions.

13 MR. HEADRICK: Part of them is. Our licenses go
14 through the end of May.

15 MR. O'BRIEN: Fair enough.

16 Are the diversions that occur between June 1 and the
17 end of September by the Conservation District within the
18 season of diversion under your licenses?

19 MR. COSGROVE: I will object on relevance. It seems as
20 though we are setting up a water rights fight.

21 MR. O'BRIEN: I will explain the relevance, if I may.
22 He is saying there is no water available in the system over
23 and above his license rights and the rights of the other
24 claimants. Yet his employer, the district, has diverted
25 vast quantities of water during those same months under the

1 pre-1914 rights when he said there is no water in excess of
2 the licensed rights. So something is inconsistent here, and
3 I am entitled to explore that.

4 H.O. BAGGET: I would overrule the objection.

5 MR. O'BRIEN: Are the diversions that occur by the
6 Conservation District between the months of -- between June
7 1 and the end of September within the season of diversion
8 under the Conservation District's license rights?

9 MR. COSGROVE: To the extent that the witness is
10 testifying to his understanding. I think that does also
11 call for a legal conclusion. To the extent that you
12 understand.

13 MR. HEADRICK: Could you ask the question again?

14 MR. O'BRIEN: Your licenses set forth season of
15 diversion. In fact, you just pointed out to me one takes
16 you through the end of May. So you are familiar with the
17 licenses?

18 MR. HEADRICK: Yes.

19 MR. O'BRIEN: Is it your understanding that water
20 that's been diverted by the Conservation District during the
21 period of June 1 through the end of September in various
22 years is water that's diverted outside the authorized season
23 of diversion under the two licenses?

24 MR. HEADRICK: That's correct.

25 MR. O'BRIEN: Thank you.

1 If I could just have one minute.
2 I have nothing further.
3 H.O. BAGGET: Thank you.
4 Mr. McNevin.
5 MR. MCNEVIN: No questions.
6 H.O. BAGGET: City of San Bernardino.
7 MR. MOSKOWITZ: No questions.
8 H.O. BAGGET: East Valley.
9 MR. KENNEDY: No questions.
10 H.O. BAGGET: Inland Empire.
11 MR. CIHIGOYENETCHE: No questions.
12 H.O. BAGGET: Big Bear.
13 MR. EVENSON: No questions.
14 H.O. BAGGET: Local Sponsors.
15 MR. DONLAN: No questions.
16 H.O. BAGGET: City of Ontario.
17 MR. GARNER: No questions.
18 H.O. BAGGET: Redirect.
19 MR. COSGROVE: Just one question.

20 ---oOo---

21 REDIRECT-EXAMINATION OF REBUTTAL TESTIMONY OF
22 SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
23 BY MR. COSGROVE

24 MR. COSGROVE: You were asked if you would perform the
25 exact same analysis as Mr. Beeby in connection with the

1 accumulated departure from mean flow whether you would come
2 up with the same conclusions and you answered yes; is that
3 correct, with respect to the three gauges?

4 MR. HEADRICK: Yes.

5 MR. COSGROVE: Would you perform that exact same
6 analysis to determine the availability of flow at Mentone
7 from the gauges?

8 MR. HEADRICK: Reask the question again.

9 MR. COSGROVE: Would you have selected the same
10 methodology? The question that you were asked if adopting
11 the same methodology as they did, if you ran the numbers
12 would it be the same? I guess my question is, would you
13 adopt that same methodology?

14 MR. HEADRICK: No.

15 MR. COSGROVE: I have no further questions.

16 MR. O'BRIEN: Nothing further.

17 H.O. BAGGET: Exhibits.

18 MR. COSGROVE: We will offer Conservation District
19 Exhibits Number 21 through 36, I believe.

20 MS. MROWKA: Yes.

21 H.O. BAGGET: Objections.

22 If not, they are entered into the record.

23 MR. CIHIGOYENETCHE: Mr. Bagget, I have Traci Stewart
24 in rebuttal, and also a new witness in rebuttal, Mr. Bud
25 Carroll.

1 REBUTTAL TESTIMONY OF INLAND EMPIRE UTILITIES AGENCY

2 BY MR CIHIGOYENETCHE

3 MR. CIHIGOYENETCHE: Mr. Carroll, spell your name for
4 the record.

5 MR. CARROLL: It's Carroll. My first name is William,
6 W-i-l-l-i-a-m.

7 MR. CIHIGOYENETCHE: I am going to begin briefly with
8 Ms. Stewart, if that is okay.

9 Ms. Stewart, you have an overhead. You heard the
10 testimony of Mr. Mills earlier with regard to the 12,000
11 acre-feet per year, and how it represents 8 percent of the
12 overall runoff?

13 MS. STEWART: Yes. And I borrowed this overhead from
14 Dr. Drury. Under our judgment, which is very much like the
15 other adjudications for the watershed, it is a stipulated
16 judgment and a physical solution in response to Ms.
17 Forster's inquiries about it.

18 Our parties to this judgment consider this, in essence,
19 like a kind of implementation of their rights under the
20 Santa Ana judgment. That is why it was done subsequent to
21 the Santa Ana River Judgment, the 1969 judgment, because
22 this in essence represents what they then agree to on how we
23 are going to use the water resources in our basin.

24 In developing this Optimum Basin Management Program
25 very recently each of the basins that you see up there, they

1 are indicated in green, those are existing basins that we
2 have available to us in furtherance of optimally managing
3 our basins. We had our engineer, Mark Wildermuth, analyze
4 our ability to use those basins. And with some
5 modification, but minor modification, primarily reoperation
6 of those basins, what we have found is that with these
7 existing basins we have the ability to not only --

8 MR. MCNEVIN: Objection. I object on hearsay grounds.
9 Apparently this witness is now recharacterizing the
10 testimony of a person who did this work, who is not
11 available for cross, Mr. Wildermuth.

12 MR. CIHIGOYENETCHE: She can testify as to technical
13 data that she has received in the course of managing and
14 performing her duties as Watermaster. I think it goes to
15 the weight of testimony as opposed to the admissibility of
16 the testimony.

17 MR. MCNEVIN: If I can respond. It doesn't go to
18 weight at all. The rules for this Board on hearsay are that
19 hearsay is only admissible if the underlying evidence would
20 be admissible. Here Mr. Wildermuth is not available. This
21 is hearsay on hearsay. Not only is he not available, but
22 now we have this witness' recharacterization without any
23 legitimate opportunity by us. No exhibits were submitted on
24 this. No testimony. We have no opportunity to cross Mr.
25 Wildermuth on this.

1 H.O. BAGGET: Response.

2 MR. CIHIGOYENETCHE: The response is that this is
3 information that she is imparting to us based on her
4 knowledge in the course of management of the Watermaster. I
5 could rephrase the question as to whether or not she's
6 familiar with recharge capabilities of the basin.

7 H.O. BAGGET: If you could rephrase the question.

8 MR. CIHIGOYENETCHE: Are you familiar with the recharge
9 capabilities of the basin?

10 MS. STEWART: I am familiar with the recharge
11 capabilities of the basin. What we find is that with these
12 existing facilities we have the ability to recharge not only
13 the storm water runoff that we are anticipating recharging
14 under our Optimum Basin Management Program, but also the
15 recycled water and the imported flows.

16 The only thing that we feel that we would need
17 additional recharge capability is to implement a large scale
18 conjunctive use program.

19 And that is the extent of what I wanted to provide to
20 the Board.

21 MR. CIHIGOYENETCHE: Going to Mr. Carroll at this point
22 in time.

23 Mr. Carroll, what is your present occupation, sir?

24 MR. CARROLL: I am a retired civil engineer. However,
25 I have spent my career, most of my career, with the firm of

1 James Montgomery, now known as Montgomery Watson. I was the
2 President and Chief Executive Officer for the last 20 years
3 of my career with the company.

4 MR. CIHIGOYENETCHE: You have also served on the Board
5 of Watermaster for the Santa Ana River; is that correct?

6 MR. CARROLL: Yes. I served on the Watermaster Board
7 from its inception until the last year when I resigned.

8 MR. CIHIGOYENETCHE: Its inception would be?

9 MR. CARROLL: Its inception was in 1970.

10 MR. CIHIGOYENETCHE: Are you familiar with the
11 stipulated judgment in the Orange County case, which we have
12 been referring to during these proceedings?

13 MR. CARROLL: Yes, I am. I was one of the engineers
14 that worked on that whole physical solution from the years
15 1965 through 1969.

16 MR. CIHIGOYENETCHE: You have been present here during
17 the course of this hearing, both yesterday and today; is
18 that correct?

19 MR. CARROLL: Yes, I have.

20 MR. CIHIGOYENETCHE: Did you hear the testimony of Mr.
21 Mills on behalf of Orange County Water District?

22 MR. CARROLL: Yes, I have.

23 MR. CIHIGOYENETCHE: You have heard then his position
24 is that the increased flows in the river constitute changed
25 circumstances warranting a reconsideration of the

1 declaration of fully appropriation; is that correct?

2 MR. CARROLL: I am hesitating because I understand Mr.
3 Mills' position as being there's increased flow in the
4 river. For a lot of reasons there is increased flow in the
5 river. But I am not sure that he is claiming that they have
6 the right to that increased flow. I don't know whether that
7 answers your question.

8 MR. CIHIGOYENETCHE: Kind of.

9 MR. CARROLL: My understanding here, if I can just
10 carry on, is that, well, all the data shows that there's
11 been increased flow. Both increased base flow and increased
12 storm flow that reaches Prado, that the Orange County
13 interest understands, that they only have the right to the
14 42,000 acre-foot base flow. And you have to understand that
15 that right may decrease in the future.

16 This hasn't come out in the testimony at all. But what
17 happened was in the base period that we used in developing
18 this whole solution, the base flow was 47,000 acre-feet a
19 year over that period. However, during the negotiation of
20 the settlement, because the upstream interests actually were
21 willing to guarantee 42,000 acre-feet every year of base
22 flow, there was a 5,000 acre-foot reduction just because of
23 the fact that this was a guarantee that lasted year after
24 year after year.

25 There was also a further situation that occurs that

1 after the year 1986 that that flow could be reduced to
2 34,000 acre-feet if there was a surplus greater than 10,000
3 acre-feet. Now, this is actual water they wanted -- you
4 have to deliver actually 34,000 acre-feet of actual water.
5 To make up the 42,000 acre-feet you could start using some
6 of that surplus if the surplus exceeded 10,000 acre-feet.
7 Of course, the surplus is about 1.8 million acre-feet.

8 MR. CIHIGOYENETCHE: Back during the course of
9 negotiations there was some concern by the upper region of
10 their ability to meet the guarantee of 42,000 acre-feet; is
11 that correct?

12 MR. CARROLL: That's correct.

13 MR. CIHIGOYENETCHE: And during the course of those
14 discussions in which you were a participant, Mr. Carroll,
15 future urbanization and resulting increase inflows was, in
16 fact, considered; isn't that correct?

17 MR. CARROLL: Yes, it was.

18 MR. CIHIGOYENETCHE: What was the understanding as to
19 the upper region, and the lower region for that matter, who
20 would have the right to those increased flows?

21 MR. CARROLL: The understanding was that each of the
22 upstream districts had the right to manage their own whole
23 water resource system independent of the Orange County
24 situation, as long as the base flow requirement was met at
25 Prado. So there was discussion what each one of these upper

1 districts could do relative to conserving storm flow,
2 reclaiming the wastewater and that whole situation.

3 MR. CIHIGOYENETCHE: That was all part of the
4 discussions and negotiations leading up to the stipulated
5 judgment?

6 MR. CARROLL: Yes.

7 MR. CIHIGOYENETCHE: I have nothing further of this
8 witness at this time or either of the witnesses.

9 H.O. BAGGET: Mr. O'Brien.

10 MR. O'BRIEN: No questions.

11 H.O. BAGGET: Mr. McNevin.

12 MR. MCNEVIN: May I have one moment, please?

13 H.O. BAGGET: Yes.

14 Mr. Cosgrove.

15 MR. COSGROVE: No questions.

16 H.O. BAGGET: Save my list. Is there any other party
17 having any questions?

18 Mr. McNevin, are you ready?

19 MR. MCNEVIN: Yes. Thank you, your Honor.

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21 CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF

22 INLAND EMPIRE UTILITIES AGENCY

23 BY ORANGE COUNTY WATER DISTRICT

24 BY MR. MCNEVIN

25 MR. MCNEVIN: Mr. Carroll, thank you for that history.

1 MR. CARROLL: You're welcome.

2 MR. MCNEVIN: Thank you also for confirming the
3 increased basin storm flows at Prado.

4 Ms. Stewart, I have one question for you. You said
5 that you have the ability to recharge the storm flow?

6 MS. STEWART: Yes.

7 MR. MCNEVIN: Now, we don't have the underlying data
8 for us, and I am not going to get into that with you, but
9 isn't it your understanding that the ability to recharge
10 into a basin is significantly different than that ability to
11 capture and divert so that you can recharge?

12 MS. STEWART: That's correct.

13 MR. MCNEVIN: And the ability to capture the storm flow
14 and hold it so that you can recharge is the subject of this
15 rule of seven that we were discussing this morning; is that
16 not correct?

17 MS. STEWART: I would say that the ability to capture
18 is based on what I heard Mr. Evenson say that that is
19 correct. But I was addressing our ability to recharge.

20 MR. MCNEVIN: That is what I thought.

21 Thank you very much.

22 H.O. BAGGET: Any redirect?

23 MR. CIHIGOYENETCHE: No.

24 MEMBER FORSTER: I have a question for Mr. Carroll.

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CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF
INLAND EMPIRE UTILITIES AGENCY
BY BOARD

MEMBER FORSTER: I think I understand that what you were talking about, there was an understanding in the '69 settlement about reclamation and storm flows and that was all considered at that time?

MR. CARROLL: Yes, it was. What we had to consider, and you have to realize back in that period of time there was -- the flows were quite low. The base flows were quite low. And the end result was we had to worry about how we were going to meet this guarantee. And by both -- and that guarantee was by both Western and then Chino Basin Municipal Water District. The Western engineer was Mr. Burt Web and I, together with two attorneys, Art Littlebert [phonetic] and Donald Stark got together. And what we did was we concluded that we would have to meet the base flows by discharging wastewater to the stream for a period of time. And, of course, there were other wastewater flows going into the river.

But the concept was always that the wastewater streams could be made available to satisfy the base flow. But in the big period as the area developed other consideration would be given to what would be done with the waste flows, such as reclaiming them, recharging them, dumping them in

1 the river, a lot of alternatives.

2 MEMBER FORSTER: Isn't it conceivable -- I mean, did
3 you -- I moved here in the '60s. When you were working on
4 this, you said from '65 to '69, do you think that anybody
5 had the concept of how much growth there would be in
6 impervious ground? You know, who knew the Inland Empire
7 would become such an affordable place to live and would be
8 have such rampant growth, and maybe -- I think it is said
9 that it is one of the fastest growing communities in the
10 United States.

11 So, isn't it feasible that no one had any understanding
12 of how much runoff there would really be?

13 MR. CARROLL: Actually, as engineers analyzing that
14 situation, we did anticipate there would be increasing
15 runoff with time. The big question is what rate, I mean, of
16 time, whether it would be five years, ten years, 15 years or
17 a hundred years for this development to take place. But we
18 did always realize that we were going to have increased
19 wastewater flows and increased storm runoff due to the
20 development of the area.

21 Because all of us engineers fool around with looking at
22 long range plans and development. And whether you work for
23 the Chino Basin Water District or Western, they all have
24 long range plans of what is going to happen in the future.
25 We always make population estimates, and we have done all

1 that for these area over long periods of time.

2 MEMBER FORSTER: Was it -- my final thing: But the
3 general plans of those days and the populations compared
4 with these days aren't quite equivalent, do you think?

5 MR. CARROLL: I would say that they are the same. The
6 same procedure's used. You might say a certain area has
7 increased more rapidly than you thought. If I can give you
8 an example. I made a lot of long range forecasts for
9 cities. The City of San Diego anticipated a large increase
10 in development, the City of San Diego. The City of Las
11 Vegas, the same way. Manila, Philippines, around the world.

12 And it is true that you may make a mistake on the rate
13 of growth, how fast it is going to grow, but we have been
14 proven correct that growth will occur. But possibly, maybe
15 we miss it by a few years here and there.

16 MEMBER FORSTER: That is all.

17 H.O. BAGGET: Any --

18 MR. MCNEVIN: I have some rewhatever it would be. Just
19 three.

20 MR. GARNER: Do the Board procedures provide for
21 redirect --

22 MEMBER FORSTER: He is redirection on me.

23 H.O. BAGGET: Is that the end of the procedure when a
24 Board Member --

25 MR. MCNEVIN: In light of Ms. Forster's question, I

1 wanted to follow up on the issues that were raised at that
2 point. I will be extremely brief.

3 MR. GARNER: I will defer to Mr. Frink. Just in the
4 normal course, the purpose of cross-examination is to --

5 H.O. BAGGET: I understand, but I guess I was remiss in
6 not allowing --

7 MEMBER FORSTER: Board Members --

8 H.O. BAGGET: Prior to --

9 MR. FRINK: Has Mr. McNevin participated in recross?

10 MR. MCNEVIN: But not on the topics that were just
11 raised by the Board.

12 MR. FRINK: It would be prior to Bear Valley, Ms.
13 Forster, so --

14 MEMBER FORSTER: I don't think -- excuse me. I don't
15 think there is any prohibition on anything a Board Member
16 wants to ask. I tried to keep it to what he said. He
17 talked about runoff that was anticipated and reclamation
18 that was anticipated. Maybe I just built on that. But I
19 don't think it was -- I think that it was part of what he
20 was stating, in any perspective.

21 MR. GARNER: My only point was that direct had
22 occurred and cross had occurred. Then at that time Board
23 asks whatever questions that they choose. That usually
24 closes the proceedings.

25 MR. MCNEVIN: I guarantee that we are taking more time

1 to talk about it than my short questions. I think you have
2 the authority to let me ask the questions.

3 H.O. BAGGET: I will allow the questions. I
4 understand. Just so it doesn't start a round of questions.

5 MR. MCNEVIN: Mr. Carroll, in 1969 when you were
6 negotiating a stipulated judgment, did you have available to
7 you any fact regarding the population of Inland Empire
8 today?

9 MR. CARROLL: Actually, we had made population
10 forecasts for the Inland Empire over a period of time,
11 whether it was -- and I can't say that it is factual now. I
12 can't even remember what they were.

13 MR. MCNEVIN: Did you have information as to the volume
14 of wastewater that comes down that river today? Again this
15 is in 1969.

16 MR. CIHIGOYENETCHE: Objection. These are
17 argumentative. They suggest the answer.

18 MR. MCNEVIN: I don't mean to argue. The witness said
19 that he made some projections and I am asking what he
20 projected.

21 H.O. BAGGET: Overruled.

22 MR. CARROLL: Our projections were that the wastewater
23 flow was going to increase.

24 MR. MCNEVIN: Did your projections match the numbers
25 that we actually have today?

1 MR. CARROLL: I can't remember.

2 MR. MCNEVIN: Did you make a projection of impervious
3 ground cover that matches what we have today?

4 MR. CARROLL: No.

5 MR. MCNEVIN: Thank you very much.

6 Thank you.

7 H.O. BAGGET: Any other?

8 If not, anything to get into evidence?

9 MR. CIHIGOYENETCHE: There were no additional
10 exhibits. Exhibit used by Ms. Stewart was already in the
11 record.

12 H.O. BAGGET: With that, we need to come up to closing
13 statements or briefs for the parties. I was going to
14 suggest towards the end of January.

15 MR. O'BRIEN: What we've done in past hearings is 30
16 days after the transcript is ready, and I understand that
17 the transcript will probably be ready sometime toward the
18 end of December, early January. Comes out about the same.
19 That way we all have the benefit of the transcript, which I
20 think is actually a help for the Board to go through.

21 H.O. BAGGET: I realize some people have a pretty heavy
22 December workload. I would like in fairness to give people
23 an opportunity to at least catch New Year's. I hope I did.

24 So 30 days after the transcript? Does that work for
25 staff?

1 (Discussion held off record.)

2 H.O. BAGGET: February 11th.

3 MR. O'BRIEN: That will be simultaneous brief, all
4 briefs due on the same day?

5 H.O. BAGGET: February 11th. That works for
6 everybody.

7 With that, this brings us to the close of the
8 evidentiary hearing. The evidentiary record in this matter
9 is now closed.

10 The Board will take this matter under submission. All
11 persons who participated in this hearing will be sent notice
12 of the Board's proposed order on this matter or any further
13 Board meeting at which time this matter will be considered.
14 After the Board adopts an order on this matter, any person
15 who believes this order is in error will have 30 days within
16 which time to submit a written petition for reconsideration
17 by the Board.

18 I thank you for your interest, participation and
19 cooperation, particularly, personally, being my first
20 hearing the ability to keep what I saw as a fairly
21 potentially lengthy process, I think I appreciate you
22 keeping your comments to the point and on the issues which
23 were relative to the proceedings.

24 Thank you. Have a good holiday.

25 (Hearing adjourned at 1:10 p.m.)

